Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 101

(T.D. 84-84)

Change in the Customs Service Field Organization—Springfield, Missouri

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to establish a permanent Customs port of entry at Springfield, Missouri, in the St. Louis, Missouri, Customs district. The Springfield port of entry has been operating on an experimental basis since March 8, 1982, to see if it could meet the criteria for establishing and staffing a port of entry. As a result of a recently completed review, it has been concluded that the workload will be sufficient to meet the established criteria. The change is part of a continuing program to obtain more efficient use of Customs personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

EFFECTIVE DATE: May 17, 1984.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, by a document published in the Federal Register on February 5, 1982, as T.D. 82-30 [47 FR 5406], Springfield, Missouri, was designated as a Customs port of entry in the St. Louis, Missouri, Customs district, on a 2-year experimental basis starting on March 5, 1982. T.D. 82-30 provided that, at the conclusion of the 2-year period Customs would make an

evaluation of the continued need for Customs services in the area and the adequacy of Customs facilities. If the extent of the business or the adequacy of the facilities failed to meet the criteria used by Customs to determine port of entry eligibility, the designation of Springfield as a port of entry would be revoked.

Customs has recently completed its review of the status of the workload through the temporary Customs port of Springfield, Missouri. As a result of this review, Customs has concluded that the workload will exceed the established criteria. Because it has met the established criteria and all of the facilities are satisfactory, Springfield is being designated as a permanent port of entry.

GEOGRAPHICAL DESCRIPTION

The geographical boundaries of the Springfield, Missouri, port of entry include all the territory within Greene and Christian Counties, Missouri.

AUTHORITY

Customs ports of entry are established under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2) and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449).

LIST OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspection, Imports, Organization.

AMENDMENT TO THE REGULATIONS

PART 101—GENERAL PROVISIONS

To reflect the establishment of a permanent Customs port of entry at Springfield, Missouri, the list of Customs regions, districts, and ports of entry in section 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by removing "T.D. 82–30" and inserting, in its place "T.D. 84–84" following "Springfield, Missouri, including all of the territory within Greene and Christian Counties, Missouri" under the column headed "Ports of Entry" in the St. Louis, Missouri, Customs district.

EXECUTIVE ORDER 12291

Because this amendment relates to the organization of the Customs Service, pursuant to section 1(a)(3) of E.O. 12291, it is not subject to that E.O.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this amendment. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon some small entities in the Springfield, Missouri, area, the establishment of Customs ports of entry in other locations has not had a significant economic impact on a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Furthermore, Springfield has been operating as a port of entry since 1982. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment will not have a significant economic impact on a substantial number of small entities.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: April 6, 1984.

JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

[Published in the Federal Register April 17, 1984 (49 FR 15070)]

(T.D. 84-85)

Bonds

Approval and Discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: April 11, 1984.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Action Delivery, Inc., P.O. Box 657, Cullman, AL; motor carrier; Insurance Company of North America	Jan. 12, 1984	Feb. 24, 1984	Mobile, AL $25,000
American Orient Forwarding Co., 11209 S. La Cienega, Los Angeles, CA; motor carrier; Washington International Ins. Co.	Jan. 20, 1984	Mar. 12, 1984	Los Angeles, CA $50,000
C & R Chartering Co., 602 North Broadway, La Porte, TX; motor carrier; Insurance Company of North America	Mar. 1, 1984	Mar. 1, 1984	Houston, TX $50,000
Camion's Inc., 744 Forestdale Blvd., Birmingham, AL; motor carrier; Employers Ins. of Wausau, a Mutual Co. D 3/1/84	Sept. 1, 1983	Sept. 26, 1983	Mobile, AL $25,000
Carrier Systems Motor Freight, Inc., Sellers and O'Brien Sts., Kearny, NJ; motor carrier; Federal Ins. Co. (PB 6/27/81) D 11/14/83 [1]	Nov. 14, 1983	Jan. 31, 1984	Newark, NJ $50,000
Chicago Midsouth Express Inc., 1900 First American Center, Nashville, TN; motor carrier; U.S. Fidelity and Guaranty Co.	Mar. 6, 1984	Mar. 12, 1984	New Orleans, LA $25,000
Collins & Simmons Inc., 760 Brooks Ave., Rochester, NY; motor carrier; U.S. Fidelity and Guaranty Co.	Jan. 12, 1984	Mar. 6, 1984	Buffalo, NY $25,000
Colonial Fast Freight Lines, Inc., 1215 Bankhead Highway, West, P.O. Box 10327, Birmingham, AL; motor carrier; Reliance Ins. Co.	Feb. 15, 1984	Mar. 2, 1984	Mobile, AL $25,000
Courier Systems Inc., 123 Pennsylvania Ave., Kearny, NJ; motor carrier; Washington International Ins. Co.	Dec. 7, 1983	Mar. 21, 1984	Newark, NJ $100,000
D.M.R. Transport (1975) Ltd., Highway 97 North, Grindrod, British Columbia, Canada; motor carrier; Safeco Insurance Co. of America	Mar. 15, 1984	Mar. 30, 1984	Seattle, WA $25,000
Davidson Trucking Co., Inc., 21 Riverside Park, Malden, MA; motor carrier; Washington International Ins. Co.	Sept. 29, 1983	Mar. 21, 1984	Boston, MA $25,000
W. L. Davis Trucking, Inc., P.O. Box 973, Pico Rivera, CA; motor carrier; Fireman's Fund Ins. Co. D 3/24/84	Jan. 3, 1981	Mar. 1, 1981	Nogales, AZ $25,000
Davis Transport Inc., 216 Trade St., Missoula, MT; motor carrier; Allied Fidelity Ins. Co. D 3/14/84	Oct. 24, 1983	Nov. 3, 1983	Great Falls, MT $50,000
Debrick Truck Line Co., Route 5, P.O. Box 421, Paola, KS; motor carrier; Hartford Accident & Indemnity Co.	Feb. 1, 1984	Mar. 21, 1984	St. Louis, MO $50,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
The Edge Co. (a div. of Reeves Transportation Co. of Georgia, Inc.), P.O. Box 999, Calhoun, GA; motor carrier; Great American Ins. Co.	Feb. 22, 1984	Mar. 12, 1984	Tampa, FL $25,000
Express Transportation Co., P.O. Box 11107, Chattanooga, TN; motor carrier; The Travelers Indemnity Co.	Feb. 6, 1984	Mar. 22, 1984	Mobile, AL $25,000
F-B Truck Lines, Inc., Etal, 1945 South Redwood Rd., Salt Lake City, UT; motor carrier; St. Paul Fire & Marine Ins. Co.	Feb. 2, 1984	Mar. 19, 1984	Great Falls, MT $25,000
FL Transportation, Inc., d/b/a Fast Lane Transportation, 425 Kennedy Ave., Oakland, CA; motor carrier; Fireman's Fund Ins. Co.	Jan. 1, 1984	Jan 17, 1984	San Francisco, CA $25,000
Fast Lane Transportation—see: FL Transportation, Inc.			
Fidele Tremblay, Inc., 29 Rue St. Alphonse, Luceville, Quebec, Canada; motor carrier; Northwestern National Insurance Co. of Milwaukee, WI	Dec. 6, 1983	Mar. 29, 1984	Ogdensburg, NY $25,000
Flite Line Service, Inc., 1414 Calcon Hook Rd., Sharon Hill, PA; motor carrier; Fidelity and Deposit Co.	Mar. 1, 1984	Mar. 6, 1984	Philadelphia, PA $25,000
Glacier Transport Inc., Box 428, Grand Forks, ND; motor carrier; American Manufacturers Mutual Ins. Co.	Mar. 5, 1984	Mar. 26, 1984	Pembina, ND $25,000
Gresham Transfer, Inc., 12008 N.E. Inverness Dr., Portland, OR; motor carrier; Oregon Automobile Ins. Co.	Jan. 29, 1984	Mar. 16, 1984	Portland, OR $25,000
H & R Transport Ltd., 3601 2nd Ave. North, Lethbridge, Alberta, Canada; motor carrier; Old Republic Ins. Co. (PB 8/23/82) D 3/2/84	Mar. 2, 1984	Mar. 2, 1984	Great Falls, MT $50,000
IML Freight, Inc., 2175 South 3270 West, Salt Lake City, UT; motor carrier; Northwestern National Ins. Co. of Milwaukee, WI (PB 5/31/77) D 12/13/83 [2]	Dec. 14, 1983	Jan. 26, 1984	San Francisco, CA $50,000
Intercoastal Express, Inc., 640 River Rd., Westwego, LA; motor carrier; U.S. Fidelity and Guaranty Co.	Feb. 6, 1984	Mar. 21, 1984	New Orleans, LA $25,000
Link America Corp., P.O. Box 21847, Milwaukee, WI; motor carrier; Washington International Ins. Co. (PB 7/11/83) D 2/24/84 [2]	Feb. 16, 1984	Feb. 24, 1984	Boston, MA $50,000
McGillion Transport Inc., P.O. Box 644, Bolton, Ontario, Canada; motor carrier; Hartford Fire Ins. Co. (PB 2/18/82) D 3/14/84	May 26, 1983	Mar. 14, 1984	Buffalo, NY $35,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
McLean Trucking Co., P.O. Box 213, Winston-Salem, NC; motor carrier; Federal Ins. Co. (PB 1/28/77) D 3/20/84 [4]	Mar. 4, 1984	Mar. 21, 1984	Wilmington, NC $25,000
Maritime Warehousing & Transfer Co., P.O. Box 502, Halifax, Nova Scotia, Canada; motor carrier; The Continental Ins. Co. (PB 3/9/77) D 2/8/84 [5]	Mar. 9, 1984	Mar. 21, 1984	Portland, ME $25,000
J. J. Mesa Trucking Co., Inc., 1500 S. Zarzamora, San Antonio, TX; motor carrier; St. Paul Fire & Marine Ins. Co. D 3/13/84	Mar. 15, 1983	Mar. 3, 1983	Laredo, TX $25,000
Midland Transport Co., P.O. Box 929, Moncton, New Brunswick, Canada; motor carrier; Fireman's Fund Ins. Co. (PB 6/23/80) D 3/9/84 [6]	Jan. 13, 1984	Mar. 9, 1984	Portland, ME $25,000
William H. Miller T/A Miller Trucking, Inc., 3230 Main St., Manchester, MD; motor carrier; Fireman's Fund Ins. Co. (PB 5/2/83) D 3/22/84 [7]	Mar. 19, 1984	Mar. 22, 1984	Baltimore, MD $25,000
NSD Warehousing & Distribution Systems, 1010 Knox St., Torrance, CA; motor carrier; Liberty Mutual Ins. Co.	Sept. 19, 1983	Mar. 5, 1984	Los Angeles, CA $50,000
Nationwide Carriers, Inc., P.O. Box 104, Maple Plain, MN; motor carrier; Aetna Casualty and Surety Co. D 4/10/84	Apr. 10, 1979	May 9, 1979	Minneapolis, MN $50,000
O–J Transport Co., Inc., 10290 Gratiot Ave., Detroit, MI; motor carrier; The Hanover Ins. Co.	Nov. 18, 1983	Jan. 11, 1984	Detroit, MI $50,000
Carlos Pacheco-Lucena, Urb. Villa Ramonita #18, Bo. Magueyes, Ponce, Puerto Rico; motor carrier; Puerto Rican-American Ins. Co. (PB 12/5/78) D 3/5/84	Feb. 10, 1984	Mar. 5, 1984	San Juan, PR $25,000
Piedmont, Inc., 2706 Bartol Ave., Baltimore, MD; motor carrier; The Hartford Accident & Indemnity Co.	Mar. 23, 1984	Mar. 23, 1984	Baltimore, MD $25,000
Reeves Transportation Co. of Georgia, Inc.—see: The Edge Co.			
Regional Storage & Transport, Inc., P.O. Box 817, Greenville, NC; motor carrier; St. Paul Fire & Marine Ins. Co. D 3/21/84	Mar. 8, 1983	Mar. 8, 1983	Wilmington, NC $25,000
Royale Airlines, Shreveport Regional Airport, Shreveport, LA; air carrier; United States Fire Ins. Co.	Feb. 21, 1984	Mar. 21, 1984	New Orleans, LA $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Santee Carriers, Inc., P.O. Box 638, Holly Hill, SC; motor carrier; The American Ins. Co. (PB 3/29/82) D 3/29/84 [8]	Mar. 29, 1984	Mar. 29, 1984	Charleston, SC $50,000
Schneider Transport, Inc., P.O. Box 2500, Green Bay, WI; motor carrier; State Surety Co.	Oct. 4, 1983	Mar. 8, 1984	Detroit, MI $25,000
Southeastern Warehousing & Distribution Corp., P.O. Box 1744, Mobile, AL; motor carrier; Old Republic Ins. Co.	Mar. 14, 1984	Mar. 16, 1984	Mobile, AL $25,000
Super Speed Delivery & Messenger Service, Inc., 100 W. 43rd St., New York, NY; motor carrier; Washington International Ins. Co. D 3/2/84	Jan. 26, 1981	Jan. 26, 1981	New York Seaport $25,000
Yvon Sylvestre et Associes Limitee, 305 Montee Du Moulin, Laval-Des-Rapides, Quebec, Canada; motor carrier; The Aetna Casualty & Surety Co.	Feb. 13, 1984	Mar. 16, 1984	Buffalo, NY $25,000
T.I.M.E.-DC, Inc., (a DE Corp.) 4835 LBJ Freeway, Suite 625, Heritage Square, Dallas, TX; motor carrier; Protective Ins. Co. (an IN Corp.)	May 13, 1983	Mar. 28, 1984	Dallas/Fort Worth, TX $25,000
Tropicana Transportation Corp., 1001-13th Ave. East, Bradenton, FL; motor carrier; St. Paul Fire & Marine Ins. Co.	Mar. 2, 1984	Mar. 2, 1984	Tampa, FL $25,000
Western Transport Crane & Rigging, 100 Western Way, P.O. Box 3507, Missoula, MT; motor carrier; Federal Ins. Co.	Feb. 16, 1984	Mar. 8, 1984	Great Falls, MT $25,000
Zero Motor Freight, Inc., P.O. Box 33940, San Antonio, TX; motor carrier; The Aetna Casualty & Surety Co. (PB 4/6/77) D 3/16/84 [9]	Feb. 19, 1984	Mar. 16, 1984	Laredo, TX $25,000

[1] Principal is Carrier Systems International Motor Freight, Inc.
[2] Surety is Transport Indemnity Co.
[3] Principal is Air Link Corp.
[4] Surety is Fidelity and Deposit Co. of MD.
[5] Principal is Maritime Warehousing & Transfer Co., Ltd.
[6] Surety is Reliance Ins. Co.
[7] Principal is Miller Trucking, Inc.; Surety is U.S. Fidelity & Guaranty Co.
[8] Principal is Santee Cement Carriers, Inc.; Surety is Insurance Company of North America.
[9] Principal is Zero Refrigerated Lines; Surety is National Surety Corp.

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EDWARD B. GABLE, Jr.,
Director,
Carriers, Drawback and Bonds Division.

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(T.D. 84-86)

Bonds

Approval and Discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: April 11, 1984.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Acadian Trucking Ltd., 9968 Watt Rd., Mission, B.C., Canada; motor carrier; Washington International Ins. Co.	Feb. 8, 1984	Feb. 10, 1984	Seattle, WA $25,000
Advance Freight Ltd., 18 Hackensack Ave., Trailer #2, Kearny, NJ; motor carrier; Washington International Ins. Co.	Feb. 6, 1984	Feb. 14, 1984	New York Seaport $100,000
Air-Land Freight Systems, Inc. (Texas), P.O. Drawer 489, Bedford, TX; motor carrier; Lawyers Surety Corp.	Feb. 7, 1984	Feb. 17, 1984	Dallas/Fort Worth, TX $25,000
Allen Freight Lines Inc., 1401 Fairfax Rd. D-351, Kansas City, KS; motor carrier; United States Fidelity and Guaranty Co.	Nov. 2, 1983	Feb. 8, 1984	St. Louis, MO $50,000
Almac Moving & Storage of New Hampshire, d/b/a Visa International, 11 Park Ave., Hudson, NH; motor carrier; Liberty Mutual Ins. Co.	Oct. 20, 1983	Feb. 3, 1984	Portland, ME $25,000
American Trans-Freight, Inc., 1801 South Penna. Ave., Morrisville, PA; motor carrier; The Aetna Casualty and Surety Co.	Dec. 6, 1983	Jan. 16, 1984	Philadelphia, PA $50,000
Atlantis-Airlink O/B 344023 Ontario Ltd., 900 Steveson Rd North, Oshawa, Ontario, Canada; air carrier; Royal Insurance Co.. of America	July 12, 1983	Feb. 16, 1984	Buffalo, NY $25,000
B & H Trucking Co., 1441 Ferry Ave., Camden, NJ; motor carrier; The Continental Ins. Co.	Feb. 2, 1984	Feb. 3, 1984	Philadelphia, PA $25,000
Beamon & Lassiter, Inc., 5748 Southern Blvd., Virginia Beach, VA; motor carrier; United States Fidelity & Guaranty Co.	Dec. 16, 1983	Feb. 10, 1984	Norfolk, VA $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Caldwell Transport Ltd., P.O. Box 127, Florenceville, N.B., Canada; motor carrier; Royal Globe Ins. Co. D 2/8/84	Dec. 16, 1975	Feb. 25, 1976	Portland, ME $25,000
Charleston Cartage Co., Inc., P.O. Box 558, West Columbia, SC; air carrier; The North River Ins. Co.	Dec. 20, 1983	Feb. 7, 1984	Charleston, SC $25,000
Cherokee Marine Terminal, 520 Cowan St., Nashville, TN; water carrier; St. Paul Fire & Marine Ins. Co.	Jan. 17, 1984	Feb. 22, 1984	New Orleans, LA $50,000
A. Cole Trucking, 81 Mission St., Montclair, NJ; motor carrier; Washington International Ins. Co. D 11/10/83	Nov. 10, 1981	Oct. 29, 1982	Newark, NJ $50,000
ConAgra Transportation, Inc. (an OK Corp.), 5301 West Channel Rd., P.O. Box N, Catoosa, OK; motor carrier; Seaboard Surety Co. (PB 1/18/82) D 1/16/84 [1]	Jan. 18, 1984	Mar. 28, 1984	Dallas/Fort Worth, TX $50,000
Cypress Transport Co., Inc., 112 New Brunswick Ave., Hopelawn, NJ; motor carrier; Old Republic Ins. Co.	Feb. 2, 1984	Feb. 17, 1984	New York Seaport $100,000
Dearborn's Motor Express, 140 Epping Rd., Exeter, NH; motor carrier; American Employer's Ins. Co. D 2/8/84	May 16, 1975	June 9, 1975	Portland, ME $25,000
Di-Jub Leasing Corp., P.O. Box 155 Uptown Hoboken, NJ; motor carrier; U.S. Fidelity & Guaranty Co. D/11/30/83	Jan. 19, 1976	Jan. 19, 1976	Newark, NJ $50,000
Eastern Freight Forwarders, 1750 Australian Ave., Riviera Beach, FL; motor carrier; Aetna Ins. Co.	Sept. 22, 1983	Feb. 3, 1984	Miami, FL $50,000
Eck Miller Transportation Corp., P.O. Box 248; Junction Hwy 231 & 66, Rockport, IN; motor carrier; The Aetna Casualty and Surety Co. (PB 11/1/77) D 2/24/84 [2]	Jan. 1, 1984	Feb. 24, 1984	Cleveland, OH $50,000
Fleet Carrier Corp., P.O. Box 568; 525 S. Blvd. East, Pontiac, MI; motor carrier; Liberty Mutual Ins. Co. (PB 12/1/83) D 2/17/84 [3]	Jan. 25, 1984	Feb. 17, 1984	Detroit, MI $50,000
Frontier Trucking Corp., 602 S. Stewart, Libertyville, IL; motor carrier; National Surety Corp.	Jan. 31, 1984	Feb. 15, 1984	Chicago, IL $25,000
Michael L. Ginevra d/b/a Michael L. Ginevra Trucking, Inc., 1500 S. Zarzamora, Suite 228, San Antonio, TX; motor carrier; St. Paul Fire & Marine Ins. Co.	Aug. 10, 1983	Feb. 3, 1984	Laredo, TX $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Go Transport and Delivery Service, 6405 La Porte Rd., Houston, TX; motor carrier; Washington International Ins. Co.	Dec. 22, 1983	Feb. 1, 1984	Houston, TX $50,000
Hilt Truck Line, Inc., P.O. Box 988 D.T.S., Omaha, NB; motor carrier; St. Paul Fire & Marine Ins. Co. D 2/23/84	Feb. 16, 1979	Feb. 16, 1979	Chicago, IL $25,000
ITS Trucking, Inc., P.O. Box 16127, Philadelphia, PA; motor carrier; Transamerica Ins. Co.	Oct. 31, 1983	Feb. 15, 1984	Philadelphia, PA $25,000
Inland Container Express, Inc., P.O. Box 9713, Charleston, SC; motor carrier; American Motorists Ins. Co. (PB 9/10/82) D 2/6/84 [4]	Jan. 17, 1984	Feb. 6, 1984	Charleston, SC $25,000
International Container Services, Inc., 5155 Warner Rd., Garfield Heights, OH; motor carrier; The Aetna Casualty & Surety Co. D 2/29/84	Apr. 26, 1982	May 11, 1982	Cleveland, OH $50,000
Jo-Lin Hauling, Corp., P.O. Box 430, Linden, NJ; motor carrier; Peerless Ins. Co.	Oct. 5, 1982	Feb. 29, 1984	Newark, NJ $50,000
KSI Corp., 320 Corey Way, South San Francisco, CA; air freight forwarder; Washington International Ins. Co.	Feb. 3, 1984	Feb. 13, 1984	San Francisco, CA $100,000
L & A Forwarding Inc., P.O. Box 2121, South Station, Newark, NJ; motor carrier; The Continental Ins. Co.	Sept. 21, 1983	Feb. 10, 1984	New York Seaport $100,000
Lykes Transport, Inc., P.O. Box 97, Dade City, FL; motor carrier; St. Paul Fire & Marine Ins. Co.	Feb. 6, 1984	Feb. 7, 1984	Tampa, FL $50,000
McKoin Trucking Co., Inc., 6644 Airline Highway, Baton Rouge, LA; motor carrier; Fidelity & Deposit Co. of Maryland	Feb. 23, 1984	Feb. 27, 1984	New Orleans, LA $25,000
Masselink Brothers Trucking, 901 Freeman S.W., Grand Rapids, MI; motor carrier; St. Paul Fire & Marine Ins. Co. D 2/22/84	Nov. 6, 1979	Nov. 9, 1979	Detroit, MI $50,000
National Freight, Inc., 71 West Park Ave., Vineland, NJ; motor carrier; Insurance Co. of North America	Feb. 14, 1984	Feb. 22, 1984	Philadelphia, PA $50,000
Leon Newman, Wilson's Beach, Campobello N.B., Canada; motor carrier; Old Republic Ins. Co. (PB 2/20/77) D 2/19/84 [5]	Jan. 31, 1984	Feb. 20, 1984	Portland, ME $25,000
Osage Enterprises, Inc., 2646 Greens Rd., Houston, TX; motor carrier; Old Republic Ins. Co.	Jan. 27, 1984	Feb. 1, 1984	Houston, TX $50,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Parkway Distributers, Inc., P.O. Box 18020, San Antonio, TX; motor carrier; Fidelity and Deposit Co. of Maryland	Nov. 18, 1983	Feb. 6, 1984	Laredo, TX $25,000
Rio Grande Motor Way Inc., P.O. Box 5482, Denver, CO; motor carrier; Safeco Ins. Co. of America (PB 2/1/78) D 2/1/84 [6]	Jan. 30, 1984	Feb. 22, 1984	Great Falls, MT $25,000
Saenz Bros. Trucking & Tomato Co., Inc., 1500 S. Zarzamora, San Antonio, TX; motor carrier; St. Paul Fire & Marine Ins. Co. (PB 2/18/81) D 2/21/84 [7]	Feb. 18, 1984	Feb. 21, 1984	Laredo, TX $25,000
Sanborn's Motor Express Co., 550 Forest Ave., Portland, ME; motor carrier; Hartford Accident & Indemnity Co. (PB 4/5/72) D 2/6/84 [8]	Jan. 27, 1984	Feb. 6, 1984	Portland, ME $50,000
Sea-Trade Services, Inc., 5658 W. Marginal Way S.W., Seattle, WA; motor carrier; Ins. Co. of North America (PB 6/29/83) D 2/3/84	Jan. 26, 1984	Feb. 3, 1984	Seattle, WA $25,000
Shay's Service Inc., North Main St., Dansville, NY; motor carrier; The Travelers Indemnity Co.	Jan. 9, 1984	Feb. 16, 1984	Buffalo, NY $100,000
Southern Transportation Service, Inc., 6969 Tidewater Dr., Norfolk, VA; motor carrier; United States Fidelity & Guaranty Co.	Sept. 17, 1983	Feb. 1, 1984	Norfolk, VA $25,000
Sujax, Inc., Route 2, Box 300, Union Grove, WI; motor carrier; Employers Mutual Casualty Co. D 3/10/84	Feb. 28, 1983	March 16, 1983	Milwaukee, WI $25,000
Tax Airfreight, Inc., 4430 South Kansas Ave., St. Francis, WI; motor carrier; State Surety Co. (PB 4/1/83) D 4/1/84 [9]	April 1, 1984	April 1, 1984	Milwaukee, WI $25,000
TRICOR Business Group Inc., 22 Olde Mill Run, Medford, NJ; motor carrier; St. Paul Fire & Marine Ins. Co. D 3/10/84	Oct. 21, 1981	Oct. 23, 1981	Philadelphia, PA $40,000
United Transport Corp., 319 O'Brien Rd., Kearny, NJ; motor carrier; St. Paul Fire & Marine Ins. Co.	Jan. 1, 1984	Feb. 8, 1984	Newark, NJ $100,000
Valley Trucking Co., Inc., P.O. Box 2298, Brownsville, TX; motor carrier; Ins. Co. of North America (PB 8/3/82) D 2/2/84 [10]	Dec. 22, 1983	Feb. 2, 1984	Laredo, TX $25,000
Visa International—see: Almac Moving & Storage of New Hampshire			

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Volunteer Express, Inc., P.O. Box 100886, Nashville, TN; motor carrier; The American Ins. Co.	Feb. 13, 1984	Feb. 19, 1984	New Orleans, LA $25,000

[1] Surety is St. Paul Fire & Marine Ins. Co.
[2] Surety is American Druggist' Ins. Co.
[3] Surety is Protective Ins. Co.
[4] Principal is Thompson Trucking, Inc.
[5] Surety is Peerless Ins. Co.
[6] Surety is St. Paul Fire & Marine Ins. Co.
[7] Surety is Aetna Casualty & Surety Co.
[8] Principal is Sanborn's Motor Express, Inc. Surety is Maine Bonding and Casualty Co.
[9] Surety is Employers Ins. of Wausau, a Mutual Co.
[10] Surety is St. Paul Fire & Marine Ins. Co.

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EDWARD B. GABLE, Jr.,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 84-87)

Approval of Public Gauger Performing Gauging Under Standards and Procedures Required by Customs

Notice is given pursuant to the provisions of section 151.43, Customs Regulations (19 CFR 151.43), that the application of Global Consultants, Inc., 11 Greenway Plaza #1304, Houston, Texas 77046, to gauge imported petroleum and petroleum products in the Houston and Galveston Customs Districts, in accordance with the provisions of section 151.43, Customs Regulations, is approved.

Dated: April 16, 1984.

DONALD W. LEWIS,
Director,
Entry Procedures and Penalties Division.

(T.D. 84-88)

Tuna Fish—Tariff-Rate Quota

The tariff-rate quota for the calendar year 1984, on tuna classifiable under item 112.30, Tariff Schedules of the United States, (TSUS).

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of the quota quantity for tuna for calendar year 1984.

SUMMARY: Each year the tariff-rate quota for tuna fish described in item 112.30, (TSUS), is based on the U.S. pack of canned tuna during the preceding calendar year.

EFFECTIVE DATES: The 1984 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1 through December 31, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Wagner, III, Head, Quota Section, General Programs Branch, Duty Assessment Division, Office of Commercial Operations, U.S. Customs Service, Washington, D.C. 20229 (202–566–8592).

It has now been determined that 89,699,000 pounds of tuna may be entered for consumption or withdrawn from warehouse for consumption during the calendar year 1984, at the rate of 6 percent ad valorem under item 112.30, TSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under item 112.34, TSUS.

(QUO–2–CO:T:D:G)

Dated: April 17, 1984.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register April 23, 1984 (49 FR 17113)]

U.S. Customs Service

Proposed Rulemaking

19 CFR Parts 141, 143, 145, 147, 172, 177

Proposed Customs Regulations Amendments Relating to Elimination of the Special Customs Invoice, Customs Form 5515

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes amendments to the Customs Regulations relating to invoices to eliminate the Special Customs Invoice and require that the commercial invoice identify by name a responsible individual who has knowledge of the facts of the transaction. Because of (1) statutory amendments which simplified the methods used to determine the value of imported merchandise, (2) the fact that the information required on the Special Customs Invoice also appears on the commercial invoice presented at the time of entry, and (3) increased sophistication on the part of the importing community, it is believed that there is no longer any need to require the Special Customs Invoice.

DATES: Comments must be received on or before June 19, 1984.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Herbert Geller, Duty Assessment Division (202-566-5307), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend Part 141, Customs Regulations (19 CFR Part 141), relating to invoices to eliminate the Special Customs Invoice, Customs Form 5515, (SCI), and require that the commercial invoice identify by name a responsible individual who has knowledge of the facts of the transaction. Conforming amendments

would also be made to other parts of the Customs Regulations referencing the SCI and the commercial invoice.

Section 141.83, Customs Regulations (19 CFR 141.83), provides that a SCI shall be filed for each shipment of merchandise imported into the United States if the purchase price exceeds $500 and the rate of duty is dependent in any manner upon the value of the merchandise. The SCI also is required for merchandise not imported pursuant to a purchase or agreement to purchase if the value is over $500.

The general information required by section 481(a), Tariff Act of 1930 (19 U.S.C. 1481(a)), to be shown on the SCI and all other invoices for merchandise imported into the United States, is set forth in section 141.86(a), Customs Regulations (19 CFR 141.86(a)).

Pursuant to section 481(d), Tariff Act of 1930 (19 U.S.C. 1481(d)), such exemptions from the requirements of 19 U.S.C. 1481(a), may be made by the Secretary of the Treasury as he deems available.

Furthermore, section 484(b), Tariff Act of 1930, as amended (19 U.S.C. 1484(b)), provides that the Secretary shall provide by regulation for the production of a certified invoice (i.e. SCI) for imported merchandise when he deems it advisable and the terms and conditions under which such merchandise may be permitted entry without the production of a certified invoice.

Because of (1) Pub. L. 96-39, the "Trade Agreements Act of 1979," which simplified the methods used to determine the value of imported merchandise, (2) the fact that the information required on the SCI also appears on the commercial invoice presented at the time of entry, and (3) increased sophistication on the part of the importing community, Customs believed the SCI no longer served a useful purpose. Accordingly, on February 1, 1982, instructions were sent to Customs personnel advising that effective March 1, 1982, a SCI would not be required when a signed commercial invoice is provided which contains the information required by section 141.86, Customs Regulations. The instructions further indicated that when a signed commercial invoice was not provided the SCI could still be waived in accordance with section 141.92, Customs Regulations (19 CFR 141.92).

Customs advised the public of the foregoing by a press release which was widely publicized in the trade community.

Since adoption of this change neither Customs nor the importing community has experienced any significant problems. Accordingly, it has been decided to proceed and incorporate this change of policy into the Customs Regulations.

However, on August 20, 1979, the United States accepted the "Recommendation of the Customs Co-operation Council Concerning Customs Requirements Regarding Commercial Invoices", which states that Council members should refrain from requiring a signature, for customs purposes, on commercial invoices. Accordingly, it has been decided that the present practice of accepting a signed

437-359 O - 84 - 3

commercial invoice should be changed to require the name on the commercial invoice of a responsible individual who has knowledge of the transaction.

As part of this change it is also proposed to incorporate the present requirements of section 141.86(j) (2), (4) and (8), relating to country of origin of the merchandise, exchange rate and goods and services furnished, respectively, which are not included in the invoice, into section 141.86(a), Customs Regulations, relating to general information required on the invoice.

EXECUTIVE ORDER 12291

This document will not result in a regulation which is a "major rule" as defined by section 1(b) of Executive Order 12291.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of small entities. The proposed amendments remove a regulatory burden and will result in reduced cost to the importing community.

Accordingly, it is certified under the provisions of section 3, Regulatory Flexibility Act (5 U.S.C. 605(b)), that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

PAPERWORK REDUCTION ACT

The collection of information requirements contained in proposed sections 141.86(a) (7), (10) and (11) and section 141.86(j) are subject to the provisions of the Paperwork Reduction Act (44 U.S.C. 3504) and have been cleared by the Office of Management and Budget.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

AUTHORITY

This document is issued under the authority of R.S. 251, as amended (19 U.S.C. 66), sections 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 1481, 1484, 1624).

LIST OF SUBJECTS

19 CFR Parts 141, 143, 145, 147, 172, and 177.
Customs duties and inspection, imports.

PROPOSED AMENDMENTS

It is proposed to amend Parts 141, 143, 145, 147, 172, and 177, Custroms Regulations (19 CFR Parts 141, 143, 145, 147, 172, 177), as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. It is proposed to amend the first sentence of section 141.81 by removing the words "A special Customs invoice, a" and inserting, in their place, the word "A".

2. It is proposed to amend section 141.83 by removing paragraph (a) and reserving it; removing the second sentence of paragraph (b); and revising the first sentence of paragraph (c)(1) to read as follows:

141.83 Type of invoice required.

* * * * * * *

(c) *Commercial invoice.* (1) A commercial invoice shall be filed for each shipment of merchandise not exempted by paragraph (d). * * *

3. It is proposed to further amend section 141.83(d) by removing the words "Special Customs or commercial" in the paragraph heading and inserting, in their place, the word "Commercial", and removing the words "A Special Customs Invoice or a" in the first sentence and inserting, in their place, the word "A".

4. It is proposed to amend section 141.84 by removing the words "original special Customs invoice or" in the first sentence of paragraph (a); the words "a special Customs invoice or" in the first sentence of paragraph (c); and the words "a special Customs invoice or" both times they are used in paragraph (e) and, in the second instance inserting, in their place, the word "the".

5. It is proposed to amend the first sentence of the Pro Forma Invoice form set forth in section 141.85 by removing the words "special or".

6. It is proposed to amend section 141.86 by removing the words ", except the Special Customs Invoice (Customs Form 5515) (see paragraph (j) of this section)" in the first sentence of paragraph (a); inserting the words", and the exchange rate, whether fixed or agreed" after the words "whether gold, silver, or paper" in paragraph (a)(7); removing the word "and" at the end of paragraph (a)(8); removing the period at the end of paragraph (a)(9), and inserting, in its place, a semicolon; and adding new paragraphs (a)(10) and (a)(11) to read as follows:

141.86 Contents of invoices and general requirements.

(a) * * *

(10) The country of origin of the merchandise; and,

(11) All goods or services furnished for the production of the merchandise (e.g. assists such as dies, molds, tools, engineering work) not included in the invoice price.

7. It is proposed to further amend section 141.86 by revising paragraph (j) to read as follows:

141.86 Contents of invoices and general requirements.

* * * * * * *

(j) *Name of responsible individual.* Each invoice of imported merchandise shall identify by name a responsible individual who has knowledge of the facts of the transaction.

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

It is proposed to amend section 143.27 by revising it to read as follows:

143.27 Invoices.

In the case of merchandise imported pursuant to a purchase or agreement to purchase or intended for sale and entered informally, the importer shall produce the commercial invoice covering the transaction or, in the absence thereof, an itemized statement of value.

PART 145—MAIL IMPORTATIONS

It is proposed to amend section 145.11 by removing paragraph (c) and reserving it.

PART 147—TRADE FAIRS

It is proposed to amend section 147.12 by revising it to read as follows:

147.12 Invoices.

Articles intended for a fair under the provisions of the Act are subject to the invoice requirements of Subpart F, Part 141 of this chapter.

PART 172—LIQUIDATED DAMAGES

It is proposed to amend section 172.22(b) by removing the words "Special Customs Invoices or" in the paragraph heading; the words "Special Customs Invoice, Customs Form 5515, or a" in the first sentence of paragraph (b); and the words "special Customs or" in paragraph (b)(3)(i).

PART 177—ADMINISTRATIVE RULINGS

It is proposed to amend section 177.2 by removing the words "a Special Customs Invoice" in the first sentence of paragraph (b)(2)(iii) and inserting, in their place, the words "an invoice".

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: December 23, 1983.

JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

[Published in the Federal Register April 20, 1984 (49 FR 16803)]

U.S. Customs Service

General Notice

19 CFR Part 175

Domestic Interested Parties Petition Concerning Tariff Classification of Assemblies of Color Television Receivers Which Include a Color Television Picture Tube; Extension of Comment Period

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of extension time for comments.

SUMMARY: This document extends the time for comments from interested members of the public with respect to a domestic interested parties petition requesting the reclassification of imported assemblies of color television receivers which include a color television tube. A notice inviting the public to comment on the correctness of the current classification was published in the Federal Register on January 26, 1984 (49 FR 3201). Comments were to have been received on or before March 26, 1984. Customs has been requested to extend the comment period because of the complexity of the issues involved. Inasmuch as the request has merit, additional time for comments is warranted before a final determination is made. Therefore, the comment period is being extended to (30 days from the date of publication).

DATES: Comments must be received on or before May 21, 1984.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

The domestic interested parties petition and all comments received in response to this notice will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9 a.m. to 4:30 p.m. on normal business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, Room 2426, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Michael K. Tomenga, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8181).

Dated: April 17, 1984.

JOHN P. SIMPSON,
Director, Office of Regulations & Rulings.

[Published in the Federal Register April 19, 1984 (49 FR 15568)]

Public Conference on Narcotics Smuggling and the Role Commercial Parties Can Play in Combatting This Problem

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of conference.

SUMMARY: This notice announces that a public conference will be held in the Departmental Auditorium (conference room A) at Customs Headquarters in Washington, D.C., from 1:30 to 4 p.m. on April 18, 1984, to discuss narcotics smuggling and the role commercial parties can play in combatting this problem. The discussion will include measures to reduce narcotics smuggling on commercial conveyances.

DATE: The conference will be be held on April 18, 1984, from 1:30 to 4 p.m.

ADDRESS: The conference will be held at Customs Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. in the Departmental Auditorium (conference room A).

FOR FURTHER INFORMATION CONTACT: Victor Weeren, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-2140).

SUPPLEMENTARY INFORMATION:

BACKGROUND

In response to the tremendous amount of cocaine being smuggled into the United States from Colombia, Customs has intensified its enforcement efforts. Customs interdiction efforts in 1983 resulted in a 76 percent nationwide increase in cocaine seized, from 11,150 pounds seized in 1982 to 19,602 pounds seized in 1983. Of the 14,664 pounds of cocaine seized in the Miami, Florida, area alone, 99 percent was from Colombia.

The intensified effort by Customs will be long-term and open-ended, involving 100 percent examinations of cargo shipments from Colombia, especially perishable commodities such as cut flowers, bananas, yams, and coffee. It also involves 100 percent examinations of air and sea passengers arriving from Colombia, regardless of nationality. These efforts are being conducted nationwide, at all ports where cargo and passengers arrive from Colombia. Customs

recognizes that intensified searches such as these will cause delays, but the illegal narcotics threat posed by smugglers is so significant that these steps are necessary.

Customs has also sent letters to 39 air carriers, advising them that it is incumbent upon them to exert all reasonable efforts to detect and prevent the smuggling of contraband. If those efforts are not taken, and illegal narcotics are continually found concealed aboard aircraft in places where persons other than airline employees or their representatives would not have access, then Customs is fully prepared under its authority to seize commercial aircraft and assess appropriate penalties against the airline.

Although Colombia is a major source of cocaine and commercial aircraft are widely used for smuggling narcotics, Customs interdiction program is concerned with all possible sources of illicit drugs and all available modes for transporting drugs into the United States. Therefore, Customs will be sponsoring an open conference for representatives from the airline, steamship companies, Port Authority officials, importers, and other interested parties, to discuss narcotics smuggling and the role that commercial parties can play in combatting this problem. The meeting will take place on April 18, 1984, from 1:30 to 4 p.m. in the Departmental Auditorium (conference room A) at Customs Headquarters, in Washington, D.C. It will be chaired by the Commissioner of Customs, William von Raab, and the discussion will include measures to reduce narcotics smuggling on commercial conveyances.

Dated: April 11, 1984.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register April 16, 1984 (49 FR 15047)]

ERRATUM

In CUSTOMS BULLETIN, Volume 18, No. 11, dated March 14, 1984, page 51, C.S.D. 84-31, starting with the eighth line should read as follows: Any foreign country or locality other than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, there shall appear, legibly and permanently, in close proximity to such words, letters or names, and in it at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

United States Court of International Trade

(Slip Op. 84-28)

Decisions of the United States Court of International Trade

ASEA, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 80-4-00585

Before: Bernard Newman, *Senior Judge.*

437-359 O - 84 - 4

Shunt Reactors

Shunt reactors intended for connection "in shunt" (parallel) to an electrical transmission system for the purpose of drawing inductive current to compensate for capacitive currents from the transmission lines were classified by Customs as "inductors" under item 682.60, TSUS. Plaintiff contends that the imports are properly dutiable under the provision for electrical articles not specially provided for in item 688.40, TSUS, allegedly because the shunt reactors are combination articles comprised of two "separate, nonsubordinate and coequal" components—an inductor and bushing current transformers—and therefore are "more than" inductors.

While a combination or multifunction article cannot be classified under a tariff provision that describes only one of the article's components or functions, inasmuch as it is "more than" the article so described, it is well settled that where merchandise has a single primary function and an incidental, subordinate or secondary function, it is classifiable on the basis of its primary design, construction and function. *See Tridon, Inc.* v. *United States,* 5 CIT 166 (1983), and cases cited; *The Ashflash Corporation* v. *United States,* 76 Cust. Ct. 112, 115–16, C.D. 4643, 412 F. Supp. 585 (1976), and cases cited; 2 Sturm, *Customs Law & Administration* § 54.12, at 63 (3d ed. 1983).

The evidence establishes: the function of an inductor is inductance; the primary, if not sole, function of the shunt reactors is to draw inductive current; the instant reactors are recognized in the electric power industry as inductors; and the function of the bushing current transformers (to "step down" the current for monitoring and protection of the reactor) is auxiliary or incidental to the inductive function of the reactors.

Accordingly, the Court concludes that the imports are not "more than" inductors, and were properly classified under item 682.60.

[Judgment for defendant.]

(Decided March 29, 1984)

Freeman, Wasserman & Schneider, Esqs. (Bernard J. Babb and *Philip Yale Simons, Esqs.,* of counsel) for plaintiff.

Richard K. Willard, Acting Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch; *Barbara M. Epstein, Esq.* for defendant.

Bernard Newman, *Senior Judge:*

Introduction

Plaintiff challenges the classification by the Customs Service of four shunt reactors imported from Sweden in 1978.

The District Director at the port of Duluth, Minnesota classified the imports under the provision for "inductors" in item 682.60 of the Tariff Schedules of the United States (TSUS) and assessed duty at the rate of 7.5 per centum ad valorem. Asea, Inc. (the importer)

claims that the shunt reactors are "more than" inductors and are properly dutiable under the provision in item 688.40, TSUS for "[e]lectrical articles, and the electrical parts of articles, not specially provided for" at the rate of 5.5 per centum ad valorem.

FACTUAL BACKGROUND

The imports are large reactors intended for connection "in shunt" to high voltage electrical transmission lines for the purpose of drawing inductive current to compensate for the capacitive current from the transmission line. The term "in shunt" refers to the method of installing the reactors parallel to the electrical system; the terms "reactor" and "inductor" are "used synonomously" (R. 102).

Within each of the shunt reactors are four bushing current transformers which "step down" (reduce) the current for the "protection" (Tr. 56–57, 116–17, 170, 208, 213), "safety" (Tr. 97, 191) and "monitoring" of the reactors (Tr. 56–57, 134, 191) "to ensure that the current is within the limits that you would expect it to be" (Tr. 57). The "bushing" component of the imports is the primary winding passing through the center of the current transformer core, and the secondary windings of the current transformers are around a donut-shaped iron core which is placed around the bushing of the reactor element (Tr. 34–35). The bushing current transformers do not perform an inductive function, but operate concurrently with the operation of the reactors (Tr. 172). Hence, the current transformers perform no function prior to the operation of the reactors or after the reactors have been disconnected (Tr. 72, 133). Shunt reactors "customarily" utilize bushing current transformers (Tr. 133–34).

The electric power industry recognizes shunt reactors with bushing current transformers as "inductors" (Tr. 63–64, 124, 176, 190–191, 193, 206), and the bushing current transformers are "auxiliary devices" (Tr. 174, 213) or "an accessory" (Tr. 208, 211–12) to the reactors' primary function of inductance (Tr. 124, 169, 172–73, 190, 207, 212). The shunt reactors contain a number of other auxiliary components: a hot oil thermometer for measuring the temperature of the oil to determine whether it is overheating; an oil level gauge to indicate the level of oil in the tank; a sudden pressure valve for the release of excessive gas pressure produced by an electrical fault; an expansion tank and piping; a Buckholtz relay to indicate whether a high level of gas is produced by an electrical fault; lifting lugs for raising the reactors during installation; etc.

OPINION

Plaintiff contends that the common meaning of the term "inductor" is limited to devices comprised of a coil of wire around a core, used to provide inductive reactance in an electrical circuit. Further, plaintiff posits that the shunt reactors in issue are "combina-

tion articles" comprising two "separate, nonsubordinate and coequal" components: (1) an inductor; and (2) the bushing current transformers. Therefore, according to plaintiff, the shunt reactors are "more than" inductors or transformers, and consequently, are properly dutiable under the "basket" provision for electrical articles in item 688.40, TSUS.

Defendant, however, insists that the instant reactors fall within the common meaning of the term "inductor" since the bushing current transformers are auxiliary or incidental to the primary inductive function of the reactors. Accordingly, argues defendant, the "more than" doctrine is inapplicable to the facts in this case, and the shunt reactors were properly classified by Customs under item 682.60, TSUS.

The legal principles applicable to the facts in the present case were summarized by this Court in *Ashflash Corp.* v. *United States*, 76 Cust. Ct. 112, 115–16, C.D. 4643, 412 F. Supp. 585, 587, (1976):

> It is well settled that where merchandise has a single primary function and an incidental, subordinate, or secondary function, it is classifiable on the basis of its primary design, construction, and function. [Citations omitted.]
>
> Further, a long line of authorities holds that merchandise which constitutes more than a particular article or which has additional nonsubordinate or coequal functions is not classifiable as that article. [Citations omitted.]

More recently, concerning the classification of combination or multifunction articles, Judge Maletz commented in *Tridon, Inc.* v. *United States*, 5 CIT 166, (1983):

> It is true that a combination or multifunction article cannot be classified under a provision which describes only one of the article's multiple functions, inasmuch as it is "more than" the article so described. Stated somewhat differently, an article having two functions which are co-equal cannot be classified according to either function. At the same time, however, it is the primary function of the item which governs its classification. Thus, where an item has both a primary and an incidental, subordinate or secondary function, it will be classified on the basis of the former. The question whether a given function is secondary or co-equal is one of fact. "To say that an article is 'more than' that described by a particular tariff provision is to say little more than that, in the opinion of the Court, the provision cannot be interpreted to cover it." [Citations omitted.]

As was aptly observed in *Tridon, Inc.*, "[t]he question of whether a given function is secondary or coequal is one of fact". Here, the record clearly establishes that the function of an inductor is to introduce inductance into a circuit, which is the primary, if not the sole, function of the shunt reactors. *Cf. Knowles Electronics, J.E. Bernard & Co.* v. *United States*, 71 Cust. Ct. 112, C.D. 4483, 371 F. Supp. 1393, (1973), *aff'd*, 62 CCPA 1, C.A.D. 1134, 504 F.2d 1403,

(1974). Moreover, plaintiff's witnesses readily conceded and the Government's witnesses unequivocably testified, that the instant reactors are recognized as inductors in the electric power industry. Indeed, in the industry the terms "reactor" and "inductor" are used synonymously. It is basic, of course, that tariff terms presumably carry the meaning given them in trade and commerce. *Ameliotex, Inc.* v. *United States*, 65 CCPA 22, C.A.D. 1200, 565 F.2d 674 (1977) and *Esco Manufacturing Co.* v. *United States*, 63 CCPA 71, C.A.D. 1167, 530 F.2d 949 (1976).

While the record shows that the shunt reactors function primarily as inductors,[1] they normally contain bushing current transformers which serve to "step down" the current in the shunt reactors for the purpose of monitoring the current to protect the reactors. However, there is no credible evidence in the record to support plaintiff's contention that this "step down" functon of the current transformers is coequal or nonsubordinate to the inductive function of the reactors. Rather, the record conclusively establishes that the function of the bushing current transformers is auxiliary or incidental to the function of the reactors as inductors, and that plaintiff's "more than" argument greatly exaggerates the significance of the "step down" function of the bushing current transformers. Interestingly, plaintiff's marketing brochures for the subject merchandise (defendant's exhibits B, C and D) do not even mention the bushing current transformers (Tr. 90), nor in any manner do the brochures suggest that the imports are combination inductor-transformers. This silence in the brochures speaks louder than plaintiff's "coequal" contention in its brief.

The short of the matter is that the primary function of the shunt reactors is their inductive function, and the bushing current transformers do not give the reactors a second significant function. Consequently, the cases by plaintiff wherein the Courts applied the "more than" doctrine to combination articles having a second significant or two coequal functions are readily distinguishable from the facts in the present case. *See e.g. United States* v. *Howard Hartry, Inc.*, 60 CCPA 140, C.A.D. 1099, 477 F.2d 1400 (1973) (engines with transmissions); *United States* v. *Acec Electric Corp.*, 60 CCPA 113, C.A.D. 1091, 474 F.2d 1009 (1973) (clutch-motors used on sewing machines); *All Channel Products Corp.* v. *United States*, 1 CIT 128 (1981) (switches with attached wires); *Harper-Wyman* v. *United States*, 1 CIT 108 (1981) (switch-thermostats used in ovens); *Ashflash Corp.* v. *United States, supra* (combination searchlight

[1] The American National Standards Institute, Inc. publication ANSI/IEEE C57.21-1981 covering IEEE (Institute of Electrical and Electronics Engineers) standard requirements, terminology and test code for shunt reactors over 500 kVA sets forth the following definitions:

2.1 Shunt Reactor.

2.1.1 Reactor. A device used for introducing impedance into an electric circuit, the principal element of which is inductive reactance.

2.1.2 Shunt Reactor. A reactor intended for connection in shunt to an electric system for the purpose of drawing inductive current. NOTE: The normal use for shunt reactors is to compensate for capacitive currents from transmission lines, cable, or shunt capacitors. The need for shunt reactors is most apparent at light load.

and signal-warning flashers); *Fedtro, Inc.* v. *United States*, 72 Cust. Ct. 267, C.D. 4548, 376 F. Supp. 1398 (1974) (battery chargers with tester bulb) and *Ideal Toy Corp.* v. *United States*, 66 Cust. Ct. 289, C.D. 4206 (1971) (motors with bent shaft).

The controlling principle under all the facts and circumstances of this case has been applied in numerous previous decisions involving merchandise swith multiple features or functions wherein the Court held that the primary feature or function governed the classification of the merchandise. *See e.g. United States* v. *Oxford International Corp.*, 62 CCPA 102, C.A.D. 1154, 517 F.2d 1374 (1975) (mirrors with mounting bracket); *Trans-Atlantic Co.* v. *United States*, 60 CCPA 100, C.A.D. 1088, 471 F.2d 139 (1973) (spring hinges); *Tridon, Inc.* v. *United States, supra* (motor vehicle signal flashers with audible clicking sound); *Craig Corp.* v. *United States*, 75 Cust. Ct. 162, C.D. 4623 (1975) (microphones with on-off switch); *Craig Corp.* v. *United States*, 75 Cust. Ct. 161, C.D. 4622 (1975) (footswitches for tape records). *See also* 2 Sturm, *Customs Law & Administration* § 54.12, at 63 (3d ed. 1983), and cases cited.

Predicated upon the primary function of the shunt reactors are inductors, the clearly established subordinate character of the bushing current transformers, and on consideration of the authorities cited by the parties, the Court concludes that Customs properly classified the merchandise under item 682.60, TSUS.

For the foregoing reasons, judgment will be entered for defendant dismissing this action.

(Slip Op. 84-29)

RHONE POULENC, S.A., AND RHONE POULENC INC., PLAINTIFFS *v.* THE UNITED STATES, DEFENDANT, PQ CORPORATION, DEFENDANT-INTERVENOR

Court No. 81-1-00079

Before RESTANI, *Judge.*

(Dated March 29, 1984)

Donohue and Donohue (John M. Peterson, Esq.), for plaintiffs.
Mandel and Grunfeld (Bruce M. Mitchell, Esq.), for defendant-intervenor.
Richard K. Willard, Acting Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch and *Sheila N. Ziff, Esqs.,* for defendant.

OPINION

RESTANI, *Judge:* This matter is before the court on plaintiffs' motion to amend their complaint challenging a determination of the United States Department of Commerce (Commerce) of sales at Less Than Fair Value (LTFV) pursuant to 19 U.S.C. § 1673d(a)

(1982) of the antidumping laws.[1] The amendment would add a claim that certain items found by Commerce to be general expenses and allowed in part as adjustments to Exporter's Sales Price (ESP) should not be limited as provided in 19 C.F.R. § 353.15(c) (1983).

This matter was commenced by the filing of a summons on January 27, 1981, and a complaint was filed on February 25, 1981. On April 30, 1981 the answer of defendant United States was filed. On October 1, 1982 defendant PQ Corporation ("PQ") was permitted to intervent. Oral argument was heard on plaintiffs' Rule 56.1 motion for review on December 15, 1982. On February 17, 1984 the court heard further oral argument, which was scheduled on the court's own initiative.

Shortly before the February 17, 1984 oral argument, the court issued an opinion in *Silver Reed America Inc.* v. *United States,* 7 CIT —, Slip Op. 84-8 (February 1, 1984). In that opinion, the court held that the ESP offset cap found in 19 C.F.R. § 353.15(c) is invalid. At the February 17, 1984 oral argument, plaintiffs raised the ESP offset cap issue for the first time. Within the time set by the court for briefing the issue of the appropriateness of consideration of the new issue, plaintiff moved to amend their complaint. Defendants oppose the amendment.[2]

The first objection raised by defendants is that the ESP offset cap issue was not raised at the administrative level. There appears to be no dispute on this point. During the administrative proceedings plaintiffs argued that some expenses which were found to be subject to the ESP offset cap were technical services expenses directly related to the sales under consideration and therefore were not subject to any limitation as an adjustment to ESP. 19 C.F.R. § 353.15(a). Commerce found that these expenses were general expenses subject to the capped selling expense adjustment.[3] Plaintiffs did not argue alternatively that if Commerce found that the expenses were not technical expenses directly related to the sales, but instead found the expenses to be general selling expenses, that the offset cap in 19 C.F.R. § 353.15(c) was invalid and should not be applied. In fact, plaintiff appears to have accepted the imposition of the cap.

Normally, administrative exhaustion of remedies is required before a litigant will be allowed to raise a claim via a civil action. *United States* v. *L.A. Tucker Truck Lines, Inc.,* 344 U.S. 33, 37 (1952). However, in the case of *Hormel* v. *Helvering,* 312 U.S. 552, 557 (1941), the Supreme Court stated:

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[1] The complaint also challenges a determination of the International Trade Commission of the threat of material injury pursuant to 19 U.S.C. § 1673d(b)(1)(A)(ii).

[2] The defendants' arguments overlap and will be treated together.

[3] PQ states there is a factual question as to whether the ESP offset cap was actually applied to the items which were claimed as technical services. PQ appears to concede that the cap was applied to some selling expenses.

> There may always be exceptional cases or particular circumstances which will prompt a reviewing or appellate court, where injustice might otherwise result, to consider questions of law which were neither pressed nor passed upon by the court or administrative agency below.

In the *Helvering* case the Supreme Court had just issued an opinion which made the previously unraised issue determinative, therefore the court considered the new point of law even absent administrative exhaustion.

This was also the result in *In Re Elmore,* 382 F.2d 125 (D.C. Cir. 1967) where the court found that despite failure to raise certain aspects of claims at the administrative level, remand for further proceedings was appropriate. In that case a recent Circuit opinion made it clear that plaintiff had rights which had not been recognized previously. In addition *see McKart* v. *United States,* 395 U.S. 185 (1969).

It is also generally conceded that plaintiff is not required to perform an act which would be futile at the administrative level. As stated in *United Black Fund, Inc.* v. *Hampton,* 352 F. Supp. 898, 902 (D.D.C. 1972):

> [I]t is well settled that an action should not be dismissed for failure to exhaust administrative remedies when an attempt to gain the desired relief from the agency in question would obviously be a futile act.

The plaintiff in that case was allowed to argue in District Court that Civil Service Commission regulations which, as administered, deprived it of fund raising status, constituted an abuse of discretion, even though plaintiff had not raised that issue by applying for fund raising status for the period in question.[4]

Although a party is not always excused from challenging the validity of agency procedures at the agency level, *United States* v. *L.A. Tucker Truck Lines, Inc., supra,* 344 U.S. at 37,[5] the facts of this case warrant disregard of strict application of the exhaustion of administrative remedies rule. As in *Great Falls Community T.V. Cable Co.* v. *FCC,* 416 F.2d 238 (9th Cir. 1969), there was recent and thorough debate concerning the issue which is raised for the first time in a judicial proceeding. Furthermore, there is evidence in the record that in the context of this case Commerce considered the controversy concerning the ESP offset cap.[6]

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[4] The court ultimately concluded that the regulations were valid.

[5] In this regard the United States cited *Haynes* v. *United States,* 418 F.2d 1380 (Ct. Cl. 1969), but as in many cases the complaint in *Haynes* concerned the manner of application of a regulation not the invalidity of the regulation. Similarly *Unemployment Compensation Commission of Alaska* v. *Aragon,* 329 U.S. 143 (1946) and *Tucker Truck Lines, supra,* are not directly on point because they do not involve a claim of invalidity of a recently debated regulation.

[6] Memorandum from Donald A. Furtado, Deputy Under Secretary, to Mr. Greenwald, dated November 24, 1980, Subject: Regulation Regarding Adjustments to Home Market Price for Technical Services. ITA Record at 235.

In this case it appears that it would have been futile for plaintiffs to argue that the agency should not apply its own regulation.[7] As stated by PQ Corporation, the ESP offset cap had been challenged at the time of proposed amendments to antidumping regulations in 1976 and 1979. Apparently the issue was vigorously debated. Nonetheless the regulation remained in force and was consistently applied by Commerce. It appears to the court that had plaintiffs raised the alternative argument different results would not have materialized in the administrative proceedings.[8] There is no reason to believe that objection to the ESP offset would have served any useful function in this case.

The United States argues that exhaustion of administrative remedies is statutorily mandated. Plaintiff did comply with the statute by challenging the LTFV determination at the administrative level. This case involves failure to raise one legal argument with Commerce, not failure to participate, a statutory prerequisite to suit. 19 U.S.C. § 1516a(a)(2). For this reason *Myers* v. *Bethelehem Shipbuilding Corp.*, 303 U.S. 41 (1938), and *Weinberger* v. *Salfi*, 422 U.S. 749 (1975) are distinguishable from the case at hand. Likewise, cases dealing with failure to comply with statutory requirements of filing a protest are inapplicable. *Federal Power Commission* v. *Colorado Interstate Gas Co.*, 348 U.S. 492 (1955) and *Woelke & Romeo Framing, Inc.* v. *NLRB*, 456 U.S. 645 (1982) do hold that failure to raise a legal claim at the administrative level can in some circumstances bar judicial review of the claim. But in both cases, statutes expressly barred judicial review of legal claims not raised administratively. In contrast, this court need only require exhaustion of administrative remedies "where appropriate" as long as the statutory requirement of participation in the administrative proceeding is met. 28 U.S.C. § 2637(d) (1982).

The court finds the case of *Nakajima All Co.* v. *United States*, 2 CIT 25 (1981) and similar cases cited by the United States to be distinguishable in that plaintiffs have not sought to add any factual data to the administrative record in this case. Their new claim is a purely legal one. It is within this court's discretion to determine whether the particular manner of failure to exhaust administrative remedies warrants preclusion of consideration of the new issue. The court finds that unlike the *Nakajima* case, there is no prejudice to defendants stemming from failure to raise this issue at the administrative level.

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[7] This case is distinguishable from *Champagne* v. *Schlesinger*, 506 F.2d 979 (7th Cir., 1974). There the court remanded the case for a determination as to whether the challenged regulation was mandatory. The court recognized that if the regulation was mandatory, it would have been futile to challenge the regulation administratively, so requiring exhaustion would be inappropriate. The parties appear to agree that 19 C.F.R. § 353.15(c) is mandatory.

[8] PQ argues that had plaintiffs raised the ESP offset cap issue, PQ would have argued that technical services were not general selling expenses. The court is convinced that Commerce would have applied the cap in any case. It would have been a useless exercise for Commerce to examine the factual issue which PQ might have raised, in the face of a legally dispositive regulation.

Next we turn to the question of whether plaintiffs should be allowed to amend their complaint at this late time. Since the parties are in agreement that the ESP offset cap was subject to criticism and that plaintiffs knew this, can plaintiffs be excused from not raising this issue in their original complaint?

It appears to be undisputed (apart from the administrative exhaustion issue) that the court has considerable discretion in a case such as this. Leave to amend a complaint is to be freely granted. *Foman* v. *Davis,* 371 U.S. 178 (1962). Furthermore, it has been held that mere delay without a showing of prejudice is not a sufficient reason to deny leave. *Howey* v. *United States,* 481 F.2d 1187 (9th Cir. 1973). Therefore, the court must weigh the prejudice that could result to the various parties if the amendment is allowed or precluded.

On one hand there is the inconvenience to the parties in allowing another round of briefing. If the amendment resulted in more substantial inconvenience, such as a new trial, as was the case in *Corporacion Sublistatica S.A.* v. *United States,* 1 CIT 120, 511 F. Supp. 805 (1981), cited by PQ, the court might find that real prejudice to defendants exists. However, this is a review on the record. On the other hand plaintiffs would be prejudiced by denial of their motion, because their claim will not be heard if this court does not hear it.[9] But unreasonabe delay cannot be tolerated (*Ataka America, Inc.* v. *United States,* 80 Cust. Ct. 132, C.D. 4745 (1978) and *Border Brokerage Co.* v. *United States,* 83 Cust. Ct. 97, C.D. 4825 (1979), *aff'd* 68 CCPA 35, 646 F.2d 539 (1981)). Therefore, the court is left with the question of whether the issuance of the *Silver Reed* decision is a sufficient justification for allowing a late amendment.

It is true that the ESP offset cap was an issue known to plaintiffs. This is not an "ignorance of the law" case as was the case of *Goss* v. *Revlon, Inc.,* 548 F.2d 405 (2nd Cir. 1976), *cert. denied* 434 U.S. 968 (1977), cited by PQ. One can know an issue exists but when that issue is the invalidity of properly promulgated regulations, it is difficult to say a party should have anticipated that a court would overturn the regulation. *Silver Reed* is, of course, not final, but it is the only court decision on the issue of the ESP offset cap. If *Silver Reed* is correct and if plaintiffs' claim is not heard here, plaintiffs would be made to suffer the imposition of an invalid regulation for a period of time. If *Silver Reed* is incorrect, defendants are only minimally harmed by having to brief that issue here.[10] Although a non-final decision of the Court of International Trade is not a Supreme Court decision, as was present in *Hormel* v. *Helvering, supra,* 312 U.S. 552, or even a Court of Appeals decision

[9] PQ asserts that all entries affected by this proceeding are liquidated and that relief is available through the annual review process. The record is not clear as to whether all entries are finally liquidated. Even if they are, denial of the motion will cause plaintiffs' opportunity for relief at the earliest point in time to be lost. This appears to be significant prejudice. For this reason the court denies PQ's request for a suspension of this matter.

[10] As to defendant United States that harm is even further reduced because it will be required to brief the same issue on appeal of the *Silver Reed* case.

as was in the case in *Elmore, supra,* it is nonetheless valuable, though non-binding, precedent unless and until it is reversed. *Rettinger Raincoat Mfg. Co.* v. *United States,* 57 CCPA 119, 427 F.2d 1258 (1970); *Bar Zel Expediters, Inc.* v. *United States,* 3 CIT 84, 90, 544 F. Supp. 868 (1982), *aff'd* 698 F.2d 1210 (Fed. Cir. 1983); *Bethea* v. *Mason,* 384 F. Supp. 1274 (D.Md. 1974), *aff'd* 529 F.2d 514 (4th Cir. 1975), *rev'd on other grounds* 432 U.S. 416 (1977); *Buna* v. *Pacific Far East Line, Inc.,* 441 F.Supp. 1360 (N.D.Cal. 1977).

Because the prejudice to defendants is outweighed by the court's concern regarding the imposition of a possibly invalid regulation and the harm this may cause to plaintiffs, the complaint may be amended and the court will consider the question of the validity of 19 C.F.R. § 353.15(c). A procedural order is issued separately.

(Slip Op. 84-30)

KYOWA GAS CHEMICAL INDUSTRY COMPANY, LTD., PLAINTIFF *v.* UNITED STATES, ET AL., DEFENDANTS, ROHM AND HAAS COMPANY, INTERVENOR

Court No. 83-8-01226

Before BOE, *Judge.*

MEMORANDUM OPINION AND ORDER OF REMAND

(Dated March 30, 1984)

Bayh, Tabbert & Capehart (*Thomas V. Vakerics* and *Kenneth G. Weigel,* on the briefs and at the argument) for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General (*David M. Cohen,* Director, Commercial Litigation Branch and *Velta A. Melnbrencis,* on the brief and at the argument) for the defendants.

Baker & McKenzie (*William D. Outman, II,* on the brief and at the argument) for the intervenor.

BOE, Judge: In the above entitled action, plaintiff, Kyowa Gas Chemical Industry Company, Ltd. ("Kyowa"), submitted a Rule 56.1 motion for review of an administrative determination upon an agency record, challenging the Final Results of Administrative Review of Antidumping Finding in Acrylic Sheet from Japan. 48 Fed. Reg. 34490 (July 29, 1983). Specifically, Kyowa seeks review of the Department of Commerce, International Trade Administration ("ITA") determination that Kyowaglas-XA, a product manufactured by the plaintiff, is within the scope of the antidumping finding in *Acrylic Sheet from Japan,* T.D. 76-240, 41 Fed. Reg. 36497 (August 30, 1976).

The pertinent facts are as follows. In 1976, the Secretary of the Treasury published a dumping finding on Acrylic Sheet from Japan, pursuant to section 201 of the Antidumping Act of 1921, as amended (19 U.S.C. § 160(a)). On January 1, 1980, the Trade Agreements Act of 1979 ("Act"), Pub. L. No. 96-39, 93 Stat. 144, became

effective. Section 106(a) of the Act provides that prior findings "shall remain in effect, subject to review under section 751 of the Tariff Act of 1930." [1] On March 28, 1980, the Department of Commerce published a notice of intent to conduct administrative reviews of all outstanding findings, including Acrylic Sheet from Japan. 45 Fed. Reg. 20511.

The ITA published a notice of Final Results of Administrative Review of Antidumping Finding in Acrylic Sheet from Japan. 47 Fed. Reg. 993 (January 8, 1982). The scope of the review included:

> shipments of acrylic sheet, which is made by polymerizing methyl methacrylate into a stiff, transparent, high molecular weight polymer with resistance to ultraviolet radiation, and includes sheet, whether or not cast, extruded, drilled, milled or ground on the edges.

The review did not specifically examine Kyowaglas-XA.

Kyowaglas-XA is a newly invented product, which obtained a United States Patent in 1978 and 1980. Until approximately September 1982, Kyowa exported Kyowaglas-XA to the United States without being subject to the 1976 antidumping finding. At that time, Customs at the Port of Baltimore took the position that Kyowaglas-XA was within the scope of the 1976 finding. Because of this action, plaintiff requested the ITA to make a determination with respect to Kyowaglas-XA.

On July 29, 1983, the ITA published a notice of its final results, determining that "KYOWAGLAS-XA is an acrylic sheet and is, therefore, subject to the finding." The Department of Commerce stated:

> The Department's primary bases for determining whether a product is outside the scope of an antidumping finding are the descriptions of the product contained in the petition, the initial investigation, and the ITC, Treasury, or Commerce determinations.
>
> When there is vagueness in the description of a product and the Department cannot make a determination concerning the scope of a finding or order based upon the information mentioned above, we use four additional criteria to make the determination on the scope. These criteria are: (1) Physical characteristics of the merchandise; (2) the uses for which the merchandise is imported; (3) the expectation of the ultimate purchasers; and (4) the channels of trade in which the merchandise moves.
>
> In this instance the Department did not need to resort to the four additional criteria to make a determination. We reviewed the petition, the initial investigation, and the ITC's determination, and we find that acrylic sheet, that is clear and/or trans-

[1] Section 751(a) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(a), provides in pertinent part that at least once during each 12-month period beginning on the anniversary of the date of publication of an antidumping finding under the Antidumping Act of 1921, the ITA shall review and determine the amount of any antidumping duty and shall publish the results of such review in the Federal Register.

> lucent, regardless of optical clarity, is included within the scope of the finding.

48 Fed. Reg. (1983). The plaintiff commenced the instant action by the filing of a summons and complaint on August 26, 1983. By order of the court dated December 22, 1983, the Rohm and Haas Company became an intervenor in this action.

It is undisputed that in a § 1675(a) review proceeding the ITA may clarify the scope of a prior dumping finding. Clarification of a dumping finding, however, must be distinguished from an attempt to modify or change the original finding. *Royal Business Machines* v. *United States,* 1 CIT 80, 86–87, 507 F. Supp. 1013–14 (1980), *aff'd,* 69 CCPA —, 669 F.2d 692 (1982); *Diversified Products Corp.* v. *United States,* 6 CIT —, Slip Op. 83–96 (September 27, 1983).

In determining the scope of an antidumping finding, the ITA has recognized and employed certain criteria in ascertaining whether an imported product, not previously included, is of the class or kind of merchandise contemplated by the finding. Among the factors considered by the ITA are the general physical characteristics of the product; the expectations of the ultimate purchaser; the channels of trade in which the product is sold; the manner in which the product is advertised and displayed; and the ultimate use of the product.[2] *See Parts for Self-Propelled Bituminous Paving Equipment from Canada; Clarification of Scope and Preliminary Results of Administrative Review of Antidumping Finding,* 46 Fed. Reg. 47806, 47807 (September 30, 1981).

The foregoing criteria have been recognized and utilized by our appellate court as factors in determining whether an imported product belonged to a particular class or kind of merchandise for tariff classification purposes. *See United States* v. *Carborundum Co.,* 63 CCPA 98, 102, 536 F.2d 373, 377, *cert. denied.* 429 U.S. 979 (1976). This court in *Diversified Products Corp.* approved these criteria in determining whether a new product was within the class or kind merchandise described in a prior antidumping finding.

In the proceedings conducted by the ITA presently under review, the Commerce Department states in its notice of final results that it did not apply the aforementioned criteria in determining whether Kyowaglas-XA is within the scope of the 1976 antidumping finding. The Department qualifies the utilization of these criteria as a standard or test by conditioning their use upon a preliminary finding that the initial product description is "vague."

Neither precedent nor authority has been submitted to substantiate the newly enunciated ITA standard. When the record is replete with differing evidentiary facts upon which the criteria may be applicable, the court is unable to accept this qualified application.

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[2] In determining whether the 1976 antidumping finding on Acrylic Sheet from Japan encompassed gold-flecked, metallic imbedment type of acrylic, the Customs Service in 1978 considered these criteria "essential factors" to be used as "guidelines" in making rulings on specific products. R. at 312–13.

A determination by the ITA in a § 1675(a) review proceeding shall be accepted by the court if the administrative findings are supported by substantial evidence from the record and are not contrary to law. 19 U.S.C. § 1516a(b)(1)(B). The determinative findings of the administering authority must have a rational basis discernable to the court from the evidence in the record.

Other than a self serving conclusion that the product description of acrylic sheet is not vague and, accordingly, that Kyowaglas-XA is within the scope of the antidumping finding in Acrylic Sheet from Japan, the ITA has provided no specific findings based on the applicable criteria as to whether Kyowaglas-XA falls within the class or kind of merchandise encompassed by the original antidumping finding.

Counsel in their respective briefs as well as in oral argument seek to place before this court on review evidentiary facts relating to the criteria which the ITA has deemed unnecessary to consider and apply. Had the instant action been before this court *de novo*, the conflicting evidence advanced by the plaintiff, defendant, and intervenor would have been subject to resolution. However, the failure of the ITA in its § 1675(a) review to consider these evidentiary facts in the light of the established criteria and to make its findings with respect thereto serves to make judicial review of the instant action, at this juncture, an idle act.

Accordingly, it is hereby

Ordered that the within action be and is hereby remanded to the ITA to consider in conformity with this opinion all relevant evidentiary facts and information presently in its possession or which might hereafter be presented to it in connection with the final results of administrative review conducted by it as to whether Kyowaglas-XA is within the scope of the 1976 antidumping finding on Acrylic Sheet from Japan, and it is further

Ordered that the determination so made by the ITA shall be returned to this court within a period of 30 days from the entry of this order, and it is further

Ordered that all proceedings in the above action be and are hereby stayed to permit the ITA to make its determination on remand.

(Slip Op. 84–31)

GOLDHOFER TRAILERS USA, INC. PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 81–7–00837

Before, LANDIS, *Senior Judge.*

SEMITRAILERS

The District Director of Customs for the Port of New Orleans, Louisiana classified the imported merchandise from West Germany as vehicles (including trailers), not self-propelled under TSUS item 692.60. The importer claims the merchandise should be classified as parts of motor vehicles, other, under TSUS item 692.27 in conjunction with Subpart B, headnote 1(b).

Held: The importer has sustained its dual burden of proving the classification of Customs incorrect and proving its claimed classification correct. The evidence of record establishes that the imported merchandise is a semitrailer dedicated to a particular use and imported separately from a truck tractor. The merchandise therefore falls within the ambit of Subpart B, headnote 1(b) and is properly classified under item 692.27.

Common Meaning

The common meaning of a tariff term is a question of law, not fact, which the court must decide. *American Express Company* v. *United States,* 39 CCPA 8, C.A.D. 456 (1951). Courts often consult dictionaries, lexicons and other reliable sources to aid in ascertaining common meaning. *United States.* v. *C. J. Tower & Sons of Buffalo, N.Y.,* 48 CCPA 87, C.A.D. 770 (1961); *Holly Stores, Inc.* v. *United States,* 3 CIT 278, 534 F. Supp. 818 (1981), aff'd., 697 F.2d 1387 (CAFC 1982). The court will also review the testimony of record to assist in defining a common meaning. *United States* v. *Mercantil Distribuidora, S. A. et al.,* 43 CCPA 111, C.A.D. 617 (1956).

[Judgment for plaintiff.]

(Decided April 2, 1984)

Donohue and Donohue (*James A. Geraghty* at the trial and on the briefs) for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Robert H. White* at the trial and *John J. Mahon* on the brief), for the defendant.

LANDIS, *Senior Judge:* This case arises out of a protest denied by the District Director of Customs for the Port of New Orleans, Louisiana. Customs classified merchandise, imported from West Germany, as vehicles (including trailers), not self-propelled, pursuant to TSUS item 692.60, and assessed duty at the rate of 8% ad valorem. Plaintiff claims that the merchandise is properly classifiable as other motor vehicle parts pursuant to TSUS item 692.27, as modified by Presidential Proclamation 3822, T.D. 68/9, dutiable at the rate of 4% ad valorem. The applicable TSUS items are as follows:

SCHEDULE 6, PART 6 OF THE TARIFF SCHEDULES OF THE UNITED STATES (TSUS)

SUBPART B—MOTOR VEHICLES

Subpart B Headnotes:

1. For the purposes of this subpart—

* * * * * * *

(b) automobile truck tractors imported with their trailers are, together with their trailers, classifiable in item 692.02, but, if such tractors or trailers are separately imported, they are classifiable in item 692.27.

* * * * * * *

Motor vehicles (except motorcycles) for the transport of persons or articles:

Automobile trucks valued at $1,000 or more, and motor busses:

692.02	Automobile trucks.....	8.5 percent

* * * * * * *

Chassis, bodies (including cabs), and parts of the foregoing motor vehicles:

Bodies(including cabs) and chassis:

* * * * * * *

Other:

* * * * * * *

Claimed:

692.27	Other.....	4 percent

* * * * * *

Classified:

Vehicles (including trailers), not self-propelled, not specially provided for, and parts thereof.

During the course of the trial plaintiff called two (2) witnesses for testimony and introduced exhibits I and I-A and illustrative exhibits two (2) through five (5) each including an accompanying photographic slide. Defendant introduced a singular exhibit consisting of a photographic brochure limited to the top of page four (4) therein.[1] Defendant did not call any witnesses.

Plaintiff's initial witness was Mr. Norbert Bolay, the Chief Engineer since 1977 for Goldhofer Fahrzeuwerk GmbH. & Co. the manufacturer of the merchandise in issue, located in Memmingen, West Germany. Mr. Bolay holds a degree in mechanical engineering. His studies included automatic parts and hydraulic systems. The witness testified that he supervised the production of the merchandise in issue during the whole fabrication time (R.13). He described the imported merchandise as a gooseneck and four modules, each module having four axles and each axle having eight tires. The merchandise was shipped in one complete shipment but in disassembled form (R.21). The witness stated that it takes approximately thirty minutes to assemble the gooseneck with a module (R.24) and that the gooseneck is attached to a module on one side and to a fifth wheel coupling of a truck tractor on the other side and that this was the only way the merchandise was functionable (R.26). The witness further stated that the merchandise in issue has an electrical system, is equipped with a track and has steering and braking systems, all systems being under direct control of the driver of the truck tractor.

Whereupon diagrams and related photographic slides illustrating the various systems (Illus. exhibit 2 and 2-A, electrical system, Illus. exhibit 3 and 3-A, braking system, Illus. exhibit 4 and 4-A, steering system) were introduced into evidence.

Additionally, the merchandise has a hydraulic system connected to the truck tractor to support suspension (R.52, Illus. exhibit 5 and 5-A). Mr. Bolay further testified that in his professional opinion as an engineer the merchandise constitutes a semitrailer and stated that a semitrailer transfers part of its load and dead weight to the fifth wheel coupling of a truck tractor and to the rear axle (R.49) and, that a truck tractor has no other function than use with a semitrailer. He also stated that the merchandise in issue cannot be pulled or operated by any vehicle other than a truck tractor (R.61) and, that the benefit of the semitrailer as opposed to a full trailer is the partial weight transfer to the rear two axles of the truck tractor which gives a high tractive effort (traction) (R.63). This is as opposed to a full trailer which operates with merely a drawbar and which does not distribute load weight to the cargo-pulling vehicle. Mr. Bolay stated that the 1978 cost of the merchandise in issue was approximately one million and fifty thousand Deutsch marks of

[1] A photograph of the imported merchandise (introduced at trial as plaintiff's Exhibit I) is attached as appendix I to this opinion to facilitate the understanding of the magnitude of the merchandise and place it in its proper perspective.

which the gooseneck's share accounted for approximately two hundred thousand Deutsch marks. The cost of a drawbar used in a full trailer is approximately two thousand Deutsch marks.

On cross-examination Mr. Bolay stated that modules constructed for use with a gooseneck (denominated by Goldhoefer as its STHP series) are not interchangeable with modules constructed for use with a drawbar (denominated by Goldhofer as its THP series) (R.67). The witness further stated that the modules used in the THP series and the STHP series have different steering, electrical, hydraulic and braking systems (R.85). He also testified that without the truck tractor the gooseneck trailer would be dropped down. Mr Bolay stated that a maximum of sixty five (65) tons may be transferred to the fifth wheel located on the truck tractor and that this amount of weight represents approximately 14% of the overall weight capacity of the entire system (R.95).

On redirect examination the witness testified that the gooseneck weighs 15.4 tons and that the weight of the entire vehicle is approximately 90 tons.

Plaintiff's next and final witness was Mr. Bernard R. Weber, a professional engineer with a graduate degree in mechanical engineering. Over the years Mr. Weber has been the Executive Vice President and Chief Executive Officer of two companies totally engaged in the manufacturing of trailers and trailer components. He possesses excellent professional credentials including active work with the Society of Automotive Engineers. The witness testified that he is familiar with the design, characteristics and use of the merchandise in issue (R.114 and 115). He explained that the merchandise is designed to carry heavy loads, part of the load which is carried on the wheels and tires of the modules and part carried on the fifth wheel mechanism through the gooseneck mechanism (R.115). The merchandise is designed for use with a towing vehicle equipped with a fifth wheel connection (R.116), and is not capable of use with any other type of motor vehicle (R.118). Finally, Mr. Weber testified that in his professional opinion that the merchandise was classified as a semitrailer in the automotive engineering community (R.117).

On cross-examination the witness testified that he could not state the percentage of the weight rested on the gooseneck mechanism because he did not have sufficient data concerning the weight of the trailer or the weight and position of the load suspended on anyone set of wheels (R.122). The witness further testified that he is familiar with modules that are towed by means of a drawbar attached to a towing vehicle and stated that none of the weight is transferred to the towing vehicle except on the matter of longitudinal tension when breaking (R.130). Mr Weber also testified that the basic modules could be used in either the gooseneck or the drawbar systems (R.136) where attached at the rear.

The issue presented is whether the modules and gooseneck taken collectively constitute a semitrailer, thereby falling within the purview of headnote 1(b) classifiable in TSUS item 692.27 or, whether the merchandise falls within the *eo nomine* designation of a non-self-propelled trailer classifiable in TSUS item 692.60.

After examining the testimony of record, pertinent cases, lexicons and all other evidence of record I find that plaintiff has successfully met its dual burden of proof by demonstrating that the classification of the Customs Service was erroneous and that its own claimed classification is correct. *United States* v. *New York Merchandise Co., Inc.,* 58 CCPA 53, C.A.D. 1004, 435 F.2d 1315 (1970); *Ideal Musical Merchandise Co.* v. *United States,* 84 Cust. Ct. 56, C.D. 4843 (1980).

Defendant maintains that the imported merchandise does not constitute what is known as a semitrailer. Plaintiff argues that the merchandise possesses all of the essential elements for merchandise to be classifiable as a semitrailer. The term semitrailer does not appear in the tariff laws of the United States. Therefore, the court must establish a common meaning of the term for tariff purposes.

The common meaning of a tariff term is a question of law, not fact, which the court must decide. *American Express Company* v. *United States,* 39 CCPA 8, C.A.D. 456 (1951). Courts often consult dictionaries, lexicons and other reliable sources to aid in ascertaining common meaning. *United States* v. *C. J. Tower & Sons of Buffalo, N.Y.,* 48 CCPA 87, C.A.D. 770 (1961); *Holly Stores, Inc.,* v. *United States,* 3 CIT 278, 534 F. Supp. 818 (1981), aff'd., 697 F.2d 1387 (CAFC 1982). The court will also review the testimony of record to assist in defining a common meaning. *United States* v. *Mercantil Distribuidora, S. A. et al.,* 43 CCPA 111, C.A.D. 617 (1956).

Focusing initially on the definition of the term semitrailer the court finds three highly regarded lexicons on point.

Websters 3rd New International Dictionary Unabridged (1968) defines the following terms:

trailer

> 4: a vehicle or one in a succession of vehicles hauled by some other vehicle: as a: a car on a streetcar line pulled by another car b: a light 2 wheeled car pulled (as by a bicycle or motorcycle) c: a nonautomotive highway or industrial-plant vehicle designed to be hauled (as by a tractor, motor truck, or passenger automobile) * * *

tractor truck

> a motive power unit in the form of a truck with short chassis and no body used in a combination highway freight vehicle—See full trailer, semitrailer * * *

full trailer

> a trailer whose weight is carried entirely on its own wheels

semitrailer

a freight trailer that when attached is supported at its forward end by the fifth wheel device of the truck tractor * * *

The Encyclopedia Britanica develops the relationship between these vehicles, 18 *Encyclopedia Britanica* 722 (15th ed. 1978)

> Trucks can be classified as either straight or articulated. A straight truck is one in which all axles are attached to a single frame. An articulated vehicle is one that consists of two or more separate frames connected by suitable couplings. A truck tractor is a motor vehicle designed primarily for drawing truck trailers and constructed to carry part of the weight and load of a semitrailer, which is a truck-trailer equiped [sic] with one or more axles, so constructed that the end and a substantial part of its own weight and that of its load rest upon a truck tractor. In contrast, a full trailer is so constructed that all of its own weight and that of its load rests upon its own wheels.
>
> A device called a fifth wheel is used to connect a truck tractor to a semitrailer and to permit articulation between the units. It generally includes a lower half, consisting of a trunnion (pivot assembly) plate and latching mechanism, mounted on the truck tractor for connection with a kingpin mounted on the semitrailer.

A leading treatise dealing with the automobile industry, *Society of Automotive Engineers (SAE) Handbook J. Reports, Standards and Practices* (1981 edition) defines semitrailer as follows:

semitrailer

a semitrailer is a truck trailer equipped with one or more axles, and so constructed that the front end and a substantial part of its own weight and that of its load rests on another vehicle.

Upon careful reading and analysis of these three definitions one immediately discerns that the common denominator is that a semitrailer is constructed in such manner that its front end is designed to be connected to a fifth wheel of a powered tractor truck and that said semitrailer is supported by the fifth wheel transferring part of its weight and that of its load to the fifth wheel. On the other hand, a full trailer fully supports its own weight and that of its load. This essentially is the common meaning of the terms semitrailer and trailer according to the lexicons.

In *International Spring Mfg. Co.* v. *United States,* 85 Cust, Ct. 5, C.D. 4862, 496 F. Supp. 279 (1980), aff'd. 68 CCPA 13, C.A.D. 1257, 641 F.2d 875 (1980), the court passed upon the scope of headnote 1(b). *International Spring,* id., applied a dedication to use test as related to imported merchandise and the application of headnote 1(b). The dedication to use test was previously used in conjunction with automotive goods in the cases of *Border Brokerage Company* v.

United States, 42 Cust. Ct. 343, abs. 62955 (1959) and *United States* v. *Antonio Pompeo,* 43 CCPA 9, C.A.D. 602 (1955).

In *International Spring, supra,* the court in reference to headnote 1(b) stated:

> * * * Particularly against the background of *Border Brokerage,* it seems evident that the headnote is directed to separately imported trailers which function in such manner as to create single, integrated automobile truck tractors when joined and hence are to be considered parts of motor vehicles for the purpose of TSUS * * * * at 9

In *Border Brokerage Company, supra,* the merchandise in issue was semitrailers used to transport automobiles. In holding the merchandise properly classifiable under paragraph 369(c) of the Tariff Act of 1930 as parts of automobile trucks rather than as articles of base metal, not specially provided for, the court stated:

> As the record before us establishes, the joining of a trailer to a cab creates a single integrated unit, with a common braking system and a common electrical system, operated simultaneously by the driver of the cab. Accordingly, the fact that the parts may be separated, and interchanged, would have no bearing upon the issue, especially since it is clear that unless the trailer is attached to a cab, it cannot be used in transporting automobiles, nor, indeed, for any other purpose * * * * at 346

Interestingly, both plaintiff and defendant rely upon these cases in support of their respective positions; plaintiff on the theory that the imported modules and gooseneck constitute an integrated unit dedicated to particular use and incapable of functioning without connection to a fifth wheel which receives a transfer of substantial weight from the gooseneck, modules and load; defendant on the theory that the imported modules each represent a free-standing trailer, both ends of which rest on its own wheels at all times.

This court is of the opinion that both *Border Brokerage, supra,* and *International Spring, supra,* strongly favor plaintiff's case. There is overwhelming and uncontradicted record evidence that the imported merchandise is coupled to a fifth wheel on a truck tractor and that a substantial part of the weight of the gooseneck, modules and the carrying load is transferred to the truck tractor (R.49, 63, 114). The record also shows the merchandise has electrical (R.34), hydraulic (R.51), steering (R.39), and braking systems (R.35) all connected to the truck tractor and all under direct control of the truck tractor driver.

Further evidence of the dedication for a specific use is borne out by Mr. Bolay's testimony that the merchandise in issue cannot be pulled or operated by any other vehicle other than a truck tractor (R.61). Mr. Weber testified similarly (R.118). Thus, the record evidence clearly demonstrates that the imported merchandise meets the critical standards to be deemed a semitrailer.

Defendant attempts to strengthen its case by relying on a Protest Review Decision, P.R.D. 78–22, 12 *Cust. Bull.* 1152 (1978). However, perusal of that review indicates facts different from the present case. The review in part states:

> The subject merchandise, invoiced as heavy-lift semitrailers, consists of flat-bed trailer modules *designed to be drawn by a motor vehicle such as a truck tractor, by means of a gooseneck, or drawbar. In its condition as imported, each trailer module is without auxiliary motive power, truck tractor, or gooseneck or drawbar for attachment to a truck tractor. The record shows that each module is constructed so that all its own weight and that of its load will rest upon its own wheels.* Such load will include long and irregularly shaped loads such as poles, logs, and pipes. The subject modules can be joined together to form longer trailers (emphasis supplied) at 1153.

It is at once evident that the merchandise in the review decision is dissimilar to the merchandise here. That merchandise was designed to be used with a gooseneck *or* a drawbar but was imported with neither. Only the trailer module, constructed so that all its own weight and that of its load *would rest upon its own wheels,* was imported. In effect, P.R.D. 78–22, *supra,* strengthens plaintiff's case, not defendant's.

Defendant has unsuccessfully attempted to defend its position that the imported merchandise is merely a free standing trailer which sustains its own weight. In order to accomplish this goal defendant views the merchandise only as the individual modules standing alone. However, defendant has offered no evidence in support of its contention, but as the testimony has borne out, the imported merchandise was shipped as an integrated unit, the gooseneck and the modules. It was shipped in one shipment (R.65) and sold as an integrated unit. Both expert witnesses testified that in their professional opinion the merchandise in issue would be classified as a semitrailer (R.43, 117).

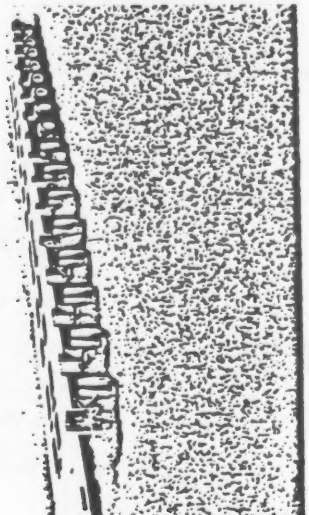
Plaintiff has established that the imported mrchandise is a semitrailer dedicated to use with a truck tractor but imported without a truck tractor, and, therefore, the merchandise is properly classifiable under item 692.27.

Conclusion

Plaintiff has successfully demonstrated that the imported merchandise is a semitrailer improted without a truck tractor thus showing the correctness of its claimed classification. As such, the merchandise is properly classifiable under item 692.27 and not under item 692.60 as incorrectly classified by defendant.

APPEND

APPENDIX I



(Slip Op. 84-32)

U.S. STEEL CORP., ET AL., PLAINTIFFS *v.* UNITED STATES, ET AL., DEFENDANTS

Court No. 82-7-01053

Before: WATSON, *Judge.*

(Dated April 3, 1984)

Order

In accordance with the decision of the Court of Appeals for the Federal Circuit in Appeal No. 84-639 (March 23, 1984), it is hereby

Ordered, that counsel for U.S. Steel Corporation shall be granted access to confidential information in the administrative record here under review to the extent indicated in the list of Documents appended to this Order and subject to the terms and conditions of the protective provisions stated at the conclusion of this Order.

In order that this action shall be disposed of expeditiously, on the same schedule as the action with which it was originally consolidated *(Republic Steel Corp* v. *United States,* Court No. 82-3-00372) it is further

Ordered, that this action is once again consolidated with Court No. 82-3-00372, and it is further

Ordered, that plaintiff U.S. Steel shall file its brief on the cumulation issue by April 6, 1984, and its brief on the non-cumulation issues by April 10, 1984, and it is further

Ordered, that responses to plaintiff's brief on cumulation shall be filed by April 23, 1984, and responses to plaintiff's brief on non-cumulation issues shall be filed by April 24, 1984, and it is further

Ordered, that oral argument in the consolidated action shall be held on April 23, 1984, for the cumulation issue and April 24, 1984, for the non-cumulation issues, and it is further

Ordered, that the filing and service required by this Order shall be done by express mail or personal delivery and it is further

Ordered, that the documents on the attached list shall be disclosed subject to the following terms and provisions:

1. The documents shall be made available to D. B. King, Leslie Ranney, Craig Mallick, John Mangan, Peter Koenig and Robin Capozzi of the Law Department of United States Steel forthwith.

2. All information not otherwise available in the public portion of the administrative record shall be considered as confidential.

3. The above-described attorneys (hereafter "Attorneys") shall not disclose the information to anyone (including any officer, shareholder, director, or employee of any of the parties in

this matter) other than their *immediate* office personnel actively assisting in this litigation, or in administrative proceedings resulting from an order of this Court in this litigation, or in any remand or appeal of this matter. The Attorneys and their immediate office personnel shall neither disclose nor use any of the confidential information for purpose other than this litigation or in administrative proceedings resulting from an order of this Court in this litigation, or in any remand or appeal of this matter.

4. The Attorneys shall cause all office personnel authorized to see the confidential information to sign a statement of acknowledgment that the information is confidential and that such information will not be disclosed to anyone other than authorized personnel.

5. The Attorneys shall not make more than (5) copies of any document that is deemed "Confidential" pursuant to this Order. A record shall be maintained of each copy made, to whom they are provided and when they are returned.

6. Whenever any document subject to the protective order is not being used, it shall be stored in a locked vault, safe, or other suitable container.

7. All such copies shall be clearly marked as containing confidential information and that they are to be returned at the conclusion of this litigation.

8. If counsel for any party wishes to consult with any expert for purposes of evaluating the confidential information, and thus disclose it to such expert, leave therefore must be obtained from the Court by motion (any opposition to which must be served by express mail and filed within five days). Such experts, if approved, shall agree not to disclose the confidential information to anyone other than to the counsel who consulted with them or to that counsel's authorized office personnel, and then for purposes of this litigation only. Any expert so consulted shall first sign a statement submitting himself or herself to the jurisdiction of the United States Court of International Trade and to such reasonable sanctions as this Court may deem appropriate in the event of a breach of the conditions of this Order.

9. Any documents, including briefs and memoranda, containing any of the confidential information subject to this Order, which are filed with the Court in this case or used for any other purpose, shall be conspicuously marked as containing confidential information which is not to be disclosed to the public, and arrangements shall be made with the Clerk of this Court to retain such documents under seal, permitting access only to the Court, Court personnel authorized by the Court to have access, and attorneys of record for the parties. Copies of all the foregoing documents, but with the confidential information deleted, shall be filed with the Court at the same time that the documents containing the confidential information are filed.

10. Any briefs or memoranda containing confidential information shall be served on the other parties in a wrapper con-

spicuously marked on the front "Confidential" and shall be accompanied by a separate copy from which the confidential information has been deleted.

11. Upon conclusion of this litigation, the Attorneys shall return all documents containing confidential information and all copies made of such documents, including any documents or copies held by persons authorized under this Order to have access thereto, except for copies which contain work notes of the Attorneys or other authorized persons, which copies shall be destroyed. The return of such documents shall be accompanied by the record required to be maintained under paragraph 5 of this Order, and a certificate executed by an attorney of record attesting that the provisions of this paragraph have been complied with in all respects.

12. Nothing herein shall be deemed to constitute any waiver by the parties of their right to contest the asserted confidentiality of any document.

13. The Attorneys shall promptly report any breach of the provisions of this Order to the Court.

14. The Clerk of the Court is directed to take such steps as are necessary to ensure that the names and addresses of customers on the questionnaire responses are not disclosed.

LIST OF DOCUMENTS

I. Confidential documents transmitted to the United States Court of International Trade with regard to *Certain Steel Products from The Republic of Korea.*

Importers' questionnaires—documents 1, 2, 3 and 6.
Producers' questionnaires—documents 9 through 31, and 57.
Purchasers' questionnaires—documents 61, 77, 95, 96 and 97.
Staff Report to the Commission, dated 6/11/82—document 36.
Investigator's Notebook—document 37.

II. Confidential documents transmitted to the United States Court of International Trade with regard to *Certain Carbon Steel Products from Spain.*

Producers' questionnaires—documents 15, 16, 18 through 21, 23, 24, 26, 28 through 31, 33 through 35.

(Slip Op. 84-33)

UNITED STATES OF AMERICA, PLAINTIFF *v.* THEODORE QUINTIN, DEFENDANT

Court No. 81-9-01320

Before FORD, *Judge.*

Merchandise entered or attempted to be entered by false statements constitutes a violation of 19 U.S.C. § 1484(a)(1) and § 1592.

The Procedural Reform and Simplification Act of 1978 changed actions under 19 U.S.C. § 1592 from *in rem* to *in personam* proceed-

ings. Under this amendment the penalty liability is based upon the scope of culpability, i.e., fraud, gross negligence or negligence.

A request to return the merchandise after supplying false information at the time of entry or attempted entry does not lessen the severity of the action and subjects defendant to the sanctions provided in 19 U.S.C. § 1592.

It is incumbent upon plaintiff to establish the value upon which the penalty is to be imposed.

[Judgment for plaintiff.]

(Decided April 3, 1984)

Richard K. Willard, Acting Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, (*Francis J. Sailer,* at the trial and on the brief); *Martin J. Ward,* Regional Counsel for the United States Customs Service, at the trial.

Theodore Quintin, pro se.

FORD, *Judge:* The United States instituted this action to enforce the provisions of Section 592 of the Tariff Act of 1930, as amended by Pub. L. 95-410, the Procedural Reform and Simplification Act of 1978 (19 U.S.C. § 1592), and collect the civil penalty provided therein. Exclusive jurisdiction in said action was granted to this Court by the Customs Courts Act of 1980, Pub. L. 96-417.

The pertinent portion of the provisions involved, as set forth in 19 U.S.C. § 1592, provides:

> § 1592. Penalty against goods
> (a) Prohibition.
> (1) General rule. Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty thereby, no person, by fraud, gross negligence, or negligence—
> (A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—
> (i) any document, written or oral statement, or act which is material and false, or
> (ii) any omission which is material, or
> (B) may aid or abet any other person to violate subparagraph (A)
>
> * * * * * * *
>
> (c) Maximum Penalties. (1) Fraud. A fraudulent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise.
> (2) Gross Negligence. A grossly negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed—
> (A) the lesser of—
> (i) the domestic value of the merchandise, or
> (ii) four times the lawful duties of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 40 percent of the dutiable value of the merchandise.

(3) Negligence. A negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) two times the lawful duties of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise.

(4) Prior disclosure. If the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) shall not exceed—

(A) if the violation resulted from fraud—

(i) an amount equal to 100 percent of the lawful duties of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties at the time of disclosure or within thirty days, or such longer period as appropriate customs officer may provide, after notice by the appropriate customs officer of his calculation of such unpaid amount, or

(ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or

(B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1954 [26 USCS § 6621]) on the amount of lawful duties of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties at the time of disclosure or within 30 days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his calculation of such unpaid amount.

* * * * * * *

(D) Deprivation of lawful duties. Notwithstanding section 514 of this Act [19 USCS § 1514], if the United States has been deprived of lawful duties as a result of a violation of subsection (a), the appropriate customs officer shall require that such lawful duties be restored, whether or not a monetary penalty is assessed.

(e) Court of International Trade Proceedings. Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence;

(3) if the monetary penalty is based on gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and

(4) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of proof that the act or omission did not occur as a result of the negligence.

As a result of the 1978 Amendment, *supra*, the actions under this section were changed from *in rem* to *in personam* proceedings. The merchandise may, however, under the conditions set forth in 19 U.S.C. § 1592(c)(5), be seized. In addition the liability imposed is based upon the degree of culpability of the person entering or attempting to enter merchandise into the trade and commerce of the United States. The statute as indicated *supra* provides for three degrees of culpability, to wit, fraud, gross negligence and negligence. The trial of all issues, including the amount of penalty, is *de novo*.

At the trial of this matter in Burlington, Vermont, plaintiff introduced the testimony of Howard Campbell Rhodes, a U.S. Customs Inspector; Robert Plouffe, a Customs Inspector with Canadian Customs; George Robert Klinefetter, a senior Special Agent with U.S. Customs and John Manahan, Assistant director for Classification and Value in the Vermont District. Defendant, appearing *pro se*, took the stand on his own behalf.[1]

This action is the result of defendant having entered at the port of West Berkshire, Vermont, on December 12, 1979, certain ceramic tile, glue and grout, purchased in Montreal, Canada. At the time of entry, defendant declared he had been out of the country since "Saturday" (more than 48 hours, as December 12 was a Wednesday).[2] Defendant further declared that the merchandise was for his personal or household use, and that the value was in the amount of $448.00. Plaintiff contends 1) defendant had not been out of the country for 48 hours; 2) the merchandise was not for personal or household use; 3) the correct value was $496.00.

To establish fraud on the part of defendant, plaintiff presented the testimony of Special Agent Klinefelter, who testified he had coffee with the defendant on the morning of December 12, 1979 at defendant's place of business in Montgomery Center, Vermont. The testimony of Customs Inspector Plouffe of the Canadian Customs Service established Defendant entered Canada on December 12. U.S. Customs Inspector Rhodes, who was on duty on December 12, testified defendant returned on said date. Defendant upon interro-

[1] The Court is pleased to note the courtesy of plaintiff's counsel in providing defendant with a copy of the pertinent rules in this *pro se* action.

[2] Defendant was granted a personal exemption of $300.00 on the merchandise as a result of this declaration as per Item 813.30, *infra*.

gation by counsel for plaintiff and by the court could not satisfactorily establish his whereabouts for the more than 48 hours he claims to have been in Canada.

In view of the foregoing the court is convinced that defendant's declaration with regard to being out of the country for more than 48 hours, as required by Item 813.30 of the Tariff Schedules of the United States, was patently false. Therefore, this action constitutes fraud under 19 U.S.C. § 1484(a)(1) and § 1592. The language of Item 813.30 provides:

> Articles imported by or for the account of any person arriving in the United States from a foreign country:
>
> > Other articles, including not more than 200 cigarettes and 100 cigars, acquired abroad as an incident of the journey from which the person is returning if such person arrives from the Virgin Islands of the United States or from a contiguous country which maintains a free zone or free port, or arrives from any other country after having remained beyond the United States for a period of not less than 48 hours, for his personal or household use, but not imported for the account of any other person nor intended for sale, if declared in accordance with regulations of the Secretary of the Treasury and if such person has not claimed an exemption under 813.30 or 813.31 within 30 days preceding his arrival, and does not claim an exemption under the other item on his arrival:
> >
> > 813.30 Articles, accompanying a person, not over $300 in aggregate fair retail value in the country of acquisition, including (but only in the case of an individual who has attained the age of 21) not more than 1 liter of alcoholic beverages * * * * * Free

In view of the foregoing it is unnecessary for the court to consider whether the merchandise was for defendant's personal or household use since defendant under the circumstances would not be entitled to a personal exemption. However, the record does establish the imported merchandise to have been utilized in the business of defendant rather than for his personal or household use.

Defendant, after having been informed the imported merchandise was subject to duty for the amount exceeding his $300 personal exemption, contends he sought permission to return the imported merchandise to Canada which was denied by Customs.

Mr. Quintin's request to return the merchandise to Canada does not lessen the severity of his action. Under the provisions of Section 1484(a)(1) of Title 19, United States Code, the filing with the appropriate customs officer of such documentation or information which would be necessary to enable the officer to determine whether the merchandise may be released, or to properly assess duty thereon, represent entry of said merchandise. It has been held that imports intended for entry are subject to sanctions for entry violations even when there is an absence of formal entry. *United States* v. *Eighteen Packages,* 222 F. 121 (E.D. Pa. 1915), vacated on other

grounds, 230 F. 564 (3d Cir. 1916), appeal dismissed, 242 U.S. 617 (1916).

In the case of *United States* v. *Six Hundred Sixty-one Bales of Tobacco,* 27 Fed. Cas. 1092 (D.C. N.Y. 1878) (No. 16, 297), the court held an attempt to make entry by means of a false or fraudulent statement consitutes grounds for the imposition of sanctions under the predecessor provisions of 19 U.S.C. § 1592. Accordingly, even if permission had been granted to Mr. Quintin to return the merchandise to Canada, he would be subject to sanctions under the present provisions of 19 U.S.C. § 1592, since he made false and fraudulent statements to Customs at the time he intended or attempted to enter the merchandise.

The record establishes defendant made two materially false statements at the time of entry, to wit, 1) he was out of the country more than forty-eight hours, 2) the articles were for his personal or household use. This constitutes fraud and the penalty is to be assessed on the basis of such culpability.

It is incumbent upon plaintiff in this action to establish the value upon which the penalty may be imposed. Mr. Manahan testified the value in U.S. dollars of the tile as per invoice was $300 and the glue and grout was $148. To those sums 10% was added for freight and profit which, in this case, amounted to $44.80. The duty on the tile at 24% ad valorem is $72, while the duty on the glue and grout at 2.5% ad valorem is $3.70. The domestic value, therefore, is $576.07, for which defendant is liable.[3]

In addition to the foregoing, under the provisions of 19 U.S.C. § 1592(d), defendant is further liable for the lawful duties due on the merchandise which in this case is $75.70 less the sum of $14.80 paid by defendant on entry. Defendant, therefore, is liable in the sum of $636.97.

Judgment will be entered accordingly.

(Slip Op. 84-34)

MARTIN CHERLIN, PLAINTIFF *v.* RAYMOND J. DONOVAN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, DEFENDANT

Court No. 82-6-00923

Before: RE, *Chief Judge.*

ON THE COURT'S MOTION FOR REVIEW OF ADMINISTRATIVE DETERMINATION UPON AGENCY RECORD

[Administrative determination of the Secretary of Labor denying certification of eligibility for worker adjustment assistance benefits affirmed; action dismissed.]

[3] 19 CFR 162.43 defines "domestic value" as being the "price at which such or similar merchandise is offered for sale at the time and place of appraisement * * *." Freight, profit and duty are therefore included.

(Decided April 3, 1984)

Martin Cherlin, pro se.

Richard K. Willard, Acting Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch; (*Sheila N. Ziff* on the brief), for defendant.

RE, *Chief Judge:* Plaintiff challenges the Secretary of Labor's determination which denies certification of eligibility for trade adjustment assistance benefits to plaintiff and two other former employees of a manufacturer of ladies' sportswear, Young Timers, Inc., New York, New York. The Secretary determined that the plaintiff's petition failed to satisfy the third eligibility requirement of section 222 of the Trade Act of 1974, 19 U.S.C. § 2272 (1976). Specifically, the Secretary found that imports of articles like or directly competitive with those produced by Young Timers did not contribute importantly to Young Timers' decline in sales or production, and thus, to the separation from employment of plaintiff and his fellow employees.

Plaintiff contests the Secretary's determination. First, he claims that Young Timers lost business over the period 1978 to 1980 because its customers increased their purchases of imported ladies' sportswear with a concomitant decrease in purchases from Young Timers. This increase in the purchase of imported goods, plaintiff asserts, contributed importantly to the absolute decline in sales by Young Timers and the employees' eventual separation from employment. Secondly, plaintiff complains that the Secretary's determination is not supported by the administrative record in that the investigative report of the Office of Trade Adjustment Assistance (OTAA) is based upon the results of an incorrect customer survey. In essence, plaintiff challenges the nature and extent of the Secretary's investigation.

After reviewing the administrative record, all pleadings and contentions, the court holds that the Secretary's denial of certification is supported by substantial evidence and is in accordance with law. Hence, the determination of the Secretary is affirmed.

On April 17, 1981, plaintiff and two other employees of Young Timers (petitioners) filed a petition with OTAA for certification of eligibility to apply for trade adjustment assistance benefits. Pursuant to section 221(a) of the Trade Act of 1974, 19 U.S.C. § 2271(a) (1976), OTAA published a notice of the filing of a petition and the initiation of an investigation. 46 Fed. Reg. 24,760 (1981).

OTAA's investigation disclosed that all of the employees of Young Timers were engaged in employment related to the production of ladies' sportswear, consisting of blouses, skirts, pants and jackets. These employees performed various tasks, such as pattern making, sample making, designing, cutting, shipping and sales. The sewing and assembly work for Young Timers was performed by independent contractors. Young Timers sold its garments to major department store chains and small retail shops nationwide under two brand names, Something Special Sportswear and Nostalgia.

OTAA's investigation included an industry perspective on all items produced by Young Timers, namely, women's and misses' blouses, shirts, skirts, slacks, shorts, coats and jackets. This perspective disclosed that imports of these goods generally rose during the period of 1978 to 1980. Similarly, OTAA found that domestic production increased over the same period, with the exception of the slacks and shorts industry, which experienced a slight downturn.

OTAA also conducted a survey of the major customers of Young Timers, with sixty-two percent (62%) responding. These customers comprised less than a majority of Young Timers' sales in 1979, and accounted for a substantial percentage of Young Timers' lost sales in 1980. The survey disclosed that almost all of those who responded did not import ladies sportswear in 1978, 1979 or 1980. Of those that did, their purchases of imports decreased in 1979 as compared to 1978, and in 1980 as compared to 1979. Moreover, the administrative record reveals that the decision by one customer to switch from Young Timers to another manufacturer, foreign or domestic, resulted from practical business considerations relating to the design and quality of Young Timers' product, and its inability to satisfy the customer's orders with adequate and prompt shipments.

Based on these findings, OTAA concluded that plaintiff's claim, that increased imports of ladies' sportswear contributed importantly to the downturn in Young Timers' sales and production and resultant layoff of the firm's employees, was without merit. Hence, the Secretary issued a negative determination on the petition. 47 Fed. Reg. 11,342 (1982).

Thereafter, petitioners sought administrative reconsideration of the Secretary's negative determination. They asserted that the results of the customer survey were not an accurate reflection of the state of the ladies' sportswear industry from 1978 to 1980. Petitioners also claimed that many of Young Timers' customers actually increased their purchases of imported ladies' sportswear. According to petitioners, these goods were less expensive and higher in quality than those produced by Young Timers. Moreover, they were purchased from Young Timers' American competitors, who had their products manufactured overseas. Therefore, petitioners maintained that the Secretary's determination was unsupported, and that they should not have been denied certification of eligibility for trade adjustment assistance benefits.

In dismissing petitioners' application for reconsideration, OTAA explained that an unsubstantiated assertion of a potential gain in business, were it not for the presence of imports of like or directly competitive goods, did not satisfy the criteria for certification of eligibility under section 222 of the Trade Act of 1974. In particular, OTAA reiterated that the petition failed to satisfy the "contributed importantly" test of section 222(3). OTAA noted that its customer survey showed that Young Timers' customers either did not import

ladies' sportswear in 1978, 1979 and 1980, or decreased their purchases of imported ladies' sportswear in 1979 and 1980 compared to the immediate preceding respective years. Based on these findings, the Secretary found no new grounds for reconsideration.

On June 29, 1982, plaintiff commenced this action by filing a letter of complaint seeking judicial review of the Secretary's final determination. Subsequently, the court, *sua sponte,* ordered the action submitted for review upon the administrative record pursuant to Rule 56.1.

Under section 222 of the Trade Act of 1974, 19 U.S.C. § 2272 (1976), the Secretary is to certify a group of workers as eligible to apply for adjustment assistance if he determines:

> (1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,
>
> (2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and
>
> (3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof *contributed importantly* to such total or partial separation, or threat thereof, and to such decline in sales or production. (Emphasis added.)

The Secretary denied petitioners' claim for certification for failure to satisfy the third eligibility criterion, *i.e.,* increased imports did not contribute importantly to the decline in sales or production at Young Timers, Inc., and to the separation from employment of the petitioners.

Section 284(b) of the Trade Act of 1974, 19 U.S.C. § 2395(b) (Supp. V 1981) empowers this court to review a decision by the Secretary which denies a petition for certification of eligibility for trade adjustment assistance benefits. Judicial review is available to assure that the determination by the Secretary is supported by substantial evidence contained in the administrative record, and is in accordance with law.

Two questions are presented in this action. First, whether OTAA's customer survey was conducted in a manner that provided an accurate picture of the effect of imports on Young Timers' business for the period 1978 to 1980. Second, whether, in finding that imports of ladies' sportswear did not contribute importantly to Young Timers' lost sales, and thus, to the separation from employment of its employees, the Secretary correctly interpreted and applied section 222(3) of the Trade Act of 1974.

Plaintiff maintains that the court must overturn the Secretary's negative certification determination because OTAA's underlying findings are based upon an incorrect customer survey. More specifically, plaintiff challenges the data derived from OTAA's chosen method of investigation. Plaintiff contends that the customer

survey did not permit OTAA adequately to assess whether increased imports "contributed importantly" to sales lost by Young Timers to its domestic competitors, who sold imported ladies' sportswear. Plaintiff also complains that the second question in the survey did not address the issue whether Young Timers' customers increased their purchases from those domestic vendors, *i.e.,* Young Timers' competitors, who sold imported ladies' sportswear.

Question two asks:

> To the best of your knowledge, were any of the product(s) purchased from domestic firms manufactured in a foreign country? Yes or No. If yes, indicate percentage for 1979 —— %, 1980 —— %, 1981 —— %.

Plaintiff asserts that this question lacks the specificity necessary to allow OTAA to make its assessment of the impact of imports, and, as a result, the answers would neither be accurate nor reflect the true situation in the industry during the period 1978 to 1980.

OTAA, as the Secretary's designate pursuant to Section 248 of the Trade Act of 1974, 19 U.S.C. § 2320 (1976), is empowered to conduct an investigation into plaintiff's petition. Trade Act of 1974, § 221(a), 19 U.S.C. § 2271(a) (1976). While OTAA has a duty to investigate, the nature and extent of the investigation are matters resting properly within the sound discretion of the administrating officials. *Woodrum* v. *Donovan,* 544 F. Supp. 202, 206 (Ct. Int'l Trade 1982).

Prior case law has approved the use of the customer survey method. *United Glass and Ceramic Workers of North America, AFL-CIO* v. *Marshall,* 584 F.2d 298 (D.C. Cir. 1978); *Local 167, International Molders and Allied Workers' Union, AFL-CIO* v. *Marshall,* 643 F.2d 26 (1st Cir. 1981). While these courts have characterized the survey method as "not a very sophisticated test," they have held that the technique was a reasonable means of ascertaining the existence of a causal nexus between increased imports and a firm's lost sales, and thus the resultant layoff of its employees. *Local 167,* at 30 (quoting *United Glass & Ceramic Workers,* at 405). It has been expressly noted that:

> administrative officials must have the necessary flexibility to discharge their official responsibilities under the worker adjustment assistance program. While the court may identify flaws in the methodology used by the Secretary, it is not the court's function to substitute its own method of analysis for that of the Secretary. Rather, the court will substantially defer to the Secretary's "chosen technique, only remanding a case if that technique is so marred that the Secretary's finding is arbitrary or of such nature that it could not be based on 'substantial evidence.' "

United Glass & Ceramic Workers, at 405.

Under the circumstances presented, OTAA's chosen methodology is not "so marred" as to require the court to hold that the Secre-

tary's determination "is arbitrary or of such nature that it could not be based on 'substantial evidence.' " *Id.* It is clear that the customer survey, and, in particular, the second question, provided OTAA with a sufficiently accurate picture of the buying patterns of Young Timers' customers. Plaintiff has offered very little proof, other than mere allegations, to substantiate his position that the Secretary's methodology is flawed. In view of the lack of persuasive evidence that the Secretary's findings were arbitrary, or not based on substantial evidence, the court will defer to the administrator's chosen method of analysis.

The court also must consider the question of causation, *i.e.*, whether increased imports "contributed importantly" to Young Timers' decline in sales or production and the eventual layoff of Young Timers' employees. Any examination of the causation standard must begin with the statute itself. Section 222 provides that "the term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause." The statute offers little assistance in ascertaining the precise meaning to be accorded the word "important." Hence, the court may seek guidance from the accompanying legislative history.

The relevant history reveals that Congress intended that "a cause * * * be significantly more than *de minimis* to have contributed importantly." S. Rep. No. 93-1298, 93rd Cong., 2d Sess. 133, *reprinted in* 1974 U.S. Code Cong. & Admin. News 7186, 7275. Yet, Congress strongly advised against the use of "any mechanical designation such as a percentage of causation." *Id.* By way of example, the Senate Report noted that if a factor, other than imports, was "so dominant" that any separation from employment and decline in sales or production would have occurred despite the presence of increased imports, the Secretary could not find that a petition satisfied the statutory causation requirement. *Id.* Indeed, it is evident that any separation resulting from "domestic competition, seasonal, cyclical or technological factors," regardless of the level of import penetration, is not sufficient to qualify a worker for certification of eligibility for trade adjustment assistance benefits. *Id.*

OTAA conducted an extensive and detailed investigation into each and every product line manufactured by Young Timers. The investigative report included relevant information as to competitive products, industry perspective, consumption and domestic production, exports and imports of all of the garments, and comparative ratios of imports to domestic production and imports to domestic consumption. OTAA also elicited data as to Young Timers' imports, plant employment, production, and sales for the period 1978 to 1980. Finally, OTAA conducted a survey of Young Timers' largest customers inquiring as to their purchases from Young Timers, and from other producers of ladies' sportwear, foreign or domestic.

In the product lines under investigation, the comparative ratios of imports to domestic production and consumption reveal a mixed

picture in the relative degree of import penetration over the relevant period. For blouses and shirts, imports decreased relatively 5.0% and 0.6% respectively; for skirts, imports increased relatively 2.9% and 2.2%; for slacks and shorts, imports dropped relatively 3.2% and 0.5%; and for coats and jackets, they rose 15.0% and 6.1%. In addition, OTAA considered the results of its survey of Young Timers' customers. Of those responding, only one customer reported purchases of imported ladies' sportswear, and that customer decreased its purchases of imports in 1979 as compared to 1978 and 1980 as compared to 1979. When questioned about its switch to imports, this customer noted that it would have remained a customer of Young Timers had Young Timers resolved its problems with the design, quality, and delivery of its merchandise. The remaining respondents reported no purchases of imported ladies' sportswear for the relevant period.

In view of the administrative record, and the pertinent legislation and its history, the court holds that the Secretary did not err in finding that imports of ladies' sportswear did not contribute importantly to Young Timers' lost sales. Moreover, it is evident that factors other than increased import penetration contributed importantly to Young Timers' loss of business, and thus, to the separation from employment of the petitioners.

Accordingly, it is the determination of the court that the Secretary of Labor's denial of certification is supported by substantial evidence, and is in accordance with the trade adjustment assistance provisions of the Trade Act of 1974. The determination of the Secretary is therefore affirmed, and plaintiff's action is dismissed.

(Slip Op. 84-35)

ALLEGHENY LUDLUM STEEL CORPORATION, ET AL., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, BRITISH STEEL CORPORATION, ET AL., DEFENDANTS-INTERVENORS

Court No. 83-7-01035

Before BERNARD NEWMAN, *Senior Judge.*

Collier, Shannon, Rill & Scott, Esqs. (*David A. Hartquist* and *Paul C. Rosenthal, Esqs.* of counsel) for plaintiffs.

Richard K. Willard, Acting Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch and *Sheila N. Ziff, Esq.* for defendant.

Steptoe & Johnson Chartered (*Richard O. Cunningham, Charlene Barshefsky* and *Alice L. Mattice, Esqs.* of counsel) for defendants-intervenors.

[Citation in prior opinion deleted *sua sponte.*]

(Dated: April 3, 1984)

MEMORANDUM

BERNARD NEWMAN, Senior Judge: Subsequent to the entry of my opinion and judgment in this action dated March 7, 1984 (7 CIT —, Slip Op. 84-16), Judge Watson issued a "Supplemental Order on Motion for Voluntary Dismissal" in *United States Steel Corporation, Republic Steel Corporation, et al.* v. *United States,* 7 CIT —, Slip Op. 84-26 (March 27, 1984), "[i]n the interests of accurate public knowledge of the exact identity of the [vacated] opinions involved". That supplemental order contained a list of vacated opinions and was issued by Judge Watson to clarify his prior order, 7 CIT —, Slip Op. 84-12 (February 24, 1984), which had not identified the opinions that were "vacated as moot".

Based upon the recent clarification in Slip Op. 84-26 as to the exact identity of the vacated opinions covered by Slip Op. 84-12, it thus appears that Judge Watson's opinion in *Republic Steel Corporation, et al.* v. *United States, et al.,* 4 CIT —, Slip Op. 82-55 (July 15, 1982), was not among those "vacated as moot", as previously indicated by me on page 8 of Slip Op. 84-16, in reliance on Judge Watson's prior order of February 24, 1984.

Accordingly, for the purpose of updating, and pursuant to Rule 60(a) of the Rules of the Court of International Trade, the citation of *Republic Steel,* Slip Op. 82-55, at page 8, line 23 of Slip Op. 84-16, is deleted *sua sponte.* In all other respects, the prior opinion and judgment remain unchanged.

(Slip Op. 84-36)

VIVITAR CORPORATION, PLAINTIFF *v.* THE UNITED STATES, DEFENDANT, K MART CORPORATION, AND 47TH STREET PHOTO, APPLICANTS FOR INTERVENTION

Court No. 84-1-00067

Before RESTANI, *Judge.*

OPINION AND ORDER ON THE APPLICATIONS OF 47TH STREET PHOTO AND K MART CORPORATION TO INTERVENE

[K Mart's motion for intervention denied, K Mart is granted leave to participate as *amicus curiae;* 47th Street Photo's motion for intervention is granted.]

(Dated April 4, 1984)

Stein, Shostak, Shostak & O'Hara (Steven P. Kersner, Esq.), for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, and *Velta A. Melnbrencis, Esqs.,* for defendant.

James C. Tuttle, Esq., Antitrust and International Counsel for the proposed intervenor.

Howrey & Simon (Robert W. Steele, John F. Bruce, Roger C. Simmons, Kevin P. O'Rourke, and *Catherine M. Shea, Esqs.)* for proposed intervenor.

Miller, Cassidy, Larroca & Lewin (Nathan Lewin, Jamie S. Gorelick, James L. Volling, Esqs.) for proposed intervenor.

RESTANI, *Judge:* In the present mandamus action, 47th Street Photo and K Mart Corporation (K mart) move pursuant to Rules 24(a)(2) and 24(b) of the Court of International Trade for intervention as a matter of right, or alternatively, for permissive intervention. For the following reasons, 47th Street Photo's application for intervention is granted as of right, and K mart is granted leave to participate as *amicus curiae* pursuant to Rule 76 of this court.

Rule 24(a)(2) of the court's rules provides upon timely application a non-statutory [1] absolute right to intervene.[2]

Various factors must be weighed in passing upon the timeliness of an application to intervene. *See Sumitomo Metal Industries, Ltd.* v. *Babcock & Wilcox,* 669 F.2d 703, 707–9 (C.C.P.A. 1982). It is clear that K mart's application was timely: its application for intervention was filed (12) twelve days after the plaintiff's summons and complaint were filed. In addition, there is no reason to believe that intervention would prejudice the parties, since the court had not, as of the time of its motion, heard argument on any substantive or procedural issues. K mart has, since the filing of its motion, been permitted to argue as conditional intervenor-defendant, contingent upon the court's granting of intervention. *See Ceramica Regiomontana, S.A.* v. *United States,* 5 CIT — Slip Op. 83–7 at 2, n. 2 557 F. Supp. 596 (January 26, 1983).

It is less evident but nevertheless true, that 47th Street Photo's application was also timely. 47th Street Photo filed its motion to intervene nearly a month after the filing of plaintiff's complaint and summons were filed, and only one day before oral arguments concerning jurisdiction were held in the present case. Nevertheless, the time it took 47th Street Photo to make application was not unreasonable. It is important to emphasize that prejudice to existing parties to the litigation is " 'perhaps the most important factor in determining timeliness of [an application] to intervene as of right.' " *Sumitomo Metal Industries, Ltd.* v. *Babcock & Wilcox, supra* at 708–9 *citing Petrol Stops Northwest* v. *Continental Oil Co.,* 647 F.2d 1005, 1010 (9th Cir. 1981). Time for briefing the merits of this case remains, so intervention by 47th Street Photo will not delay consideration of this action and no prejudice will occur.

Because Rule 24(a)(2) of this court is identical to Rule 24(a)(2) of the Federal Rules of Civil Procedure, as amended in 1966, practice with respect to non-statutory intervention as of right as it has de-

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[1] Rule 24(a)(1) of the court's rules, which the instant application does not raise, provides an absolute right to intervene "when a *statute* of the United States confers an unconditional right to intervene . . . ." *See* Court of International Trade, R. 24(a)(1) (emphasis provided).

[2] Rule 24(a)(2) provides that:

> Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

veloped under the federal rules is highly relevant. Accordingly, each applicant in this case must establish:

> 1. an interest relating to the property or transaction which is the subject of the action;
> 2. that without intervention, the disposition of the action may impair as a practical matter its ability to protect its interest; and
> 3. that its interest is not adequately protected by the parties to the litigation.
>
> *See Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, 386 U.S. 129 (1967); *County of Fresno* v. *Andrus*, 622 F.2d 436, 438 (9th Cir. 1980); *Nuesse* v. *Camp*, 385 F.2d 694, 699 (D.C. Cir. 1967).

All three requirements of the above test for intervention must be satisfied to entitle an applicant to intervention of right under Rule 24(a)(2). *See NAACP* v. *New York*, 413 U.S. 345 (1973); *United States* v. *Board of Education of City of Chicago*, 88 F.R.D. 679, 684 (N.D. Ill. 1981); *see also Central States* v. *Old Security Life Ins. Co.*, 600 F.2d 671, 679 (7th Cir. 1979).

The instant case has been brought by plaintiff, Vivitar, to challenge Customs' enforcement of section 526, Tariff Act of 1930, as amended, 19 U.S.C. § 1,526 (a) and (b) (Supp. V 1981), which prohibits the unauthorized importation of foreign manufactured goods which bear a registered trademark owned by a United States citizen or corporation. This type of merchandise is generally referred to as "gray market goods."

K mart alleges that it has made substantial purchases of "gray market" goods, but does not specify whether any of these bore the Vivitar trademark. In addition, it claims that it has been solicited by middlemen offering imported products under the "Vivitar" trademark. *See* Affidavit of James R. Tuttle, ¶¶ 7 and 8. K mart therefore concludes that it is entitled to intervention of right. On the other hand, 47th Street Photo alleges that it is a purchaser of Vivitar products that are available only from foreign Vivitar distributors.

The nature of the interest required to sustain a right to intervene must be a "significantly protectable [one]." *See Donaldson* v. *United States*, 400 U.S. 517 (1971); *see also, e.g., Lane* v. *Bethlehem Steel Corp.*, 93 F.R.D. 611 (D. Md. 1981). The alleged interest must not be "indirect," "remote" or "contingent." 3B Moore's Federal Practice ¶ 24.07[2], 24–59 (1982); *see, e.g., Dilks* v. *Aloha Airlines*, 642 F.2d 1155 (9th Cir. 1981); *Moosehead Sanitary District* v. *S.G. Phillips Corp.*, 601 F.2d 49 (1st Cir. 1979). *See also Athens Lumber Co.* v. *Federal Election Commission*, 690 F.2d 1364, 1366 (11th Cir. 1982) (generalized interest in outcome of a case provides no ground for intervention as of right).

This court is not convinced that K mart's interest rises to the level sufficient to entitle it to intervention of right. K mart has

demonstrated that its interest is no greater than that of "a *potential* customer for imported Vivitar products from . . . middlemen." *See* Affidavit of James R. Tuttle, ¶ 8 (emphasis supplied). Therefore, it would only be remotely affected by the decision in this matter. Consequently, as one of the requirements is lacking, intervention of right under Rule 24(a)(2) is denied.

In contrast, 47th Street Photo meets the interest requirement. As mentioned, 47th Street Photo alleges that it is a seller and purchaser of "Vivitar products that are available only from foreign Vivitar distributors." *See* 47th Street Photo's Memorandum in Support of Its Motion to Intervene at 1.[3] It claims that not only would its access to certain "gray market" Vivitar goods be extinguished should the plaintiff in the main action succeed, but also that it will be unable to continue selling Vivitar products at discounted prices. Furthermore, 47th Street Photo maintains that it sells many other foreign-manufactured "gray market" products that are not available through the manufacturers' U.S. distributors. Goldstein Affidavit at ¶ 6. 47th Street Photo's obvious economic interests, its interest in the continued existence of the gray market distributors which it utilizes as well as its interest in avoiding significant changes in the conduct of its business all support the requisite finding of significantly protectable interest.

The second test of practical impairment is a flexible one. *Jet Traders Inv. Corp.* v. *Tekair, Ltd.*, 89 F.R.D. 560 (D. Del. 1981). 47th Street Photo has alleged strong interests which the disposition of the main action may impair or impede. *See, e.g., Natural Resources Defense Council* v. *Costle*, 561 F.2d 904 (D.C. Cir. 1977); *Nuesse* v. *Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967). 47th Street Photo contends: ". . . if Vivitar were to succeed in forcing the Customs Service to amend its regulations, many of the products sold by Vivitar might be excluded from the United States and 47th Street Photo could well be forced out of the discount sales market." 47th Street Photo's Memorandum in Support of Motion to Intervene at 3.

As to the third requirement, 47th Street Photo's interest may not be adequately represented by the Government in these proceedings.[4] First, plaintiff has alleged that the Department of Justice, which is litigating defendant's case, supports plaintiff's position on the regulations at issue concerning the importation of gray market goods. *See* Complaint at ¶1. While this has not been evident from the briefs and arguments made before this court, the Government's *amicus curiae* brief in the case of *Bell & Howell:Mamiya Co.* v. *Masel Supply Co.*, 719 F.2d 42 (2d Cir. 1983), which was filed by the Justice Department, and which includes as participating counsel the Chief Counsel of the U.S. Customs Service, argues many of the

[3] 47th Street Photo alleges that about half of the Vivitar products sold by 47th Street Photo in 1983 were purchased from foreign Vivitar distributors. Goldstein Affidavit at ¶ 3.

[4] Some courts have found a high threshold of inadequacy of representation necessary for intervention under Rule 24(a). If the requisite level is lacking, this court would also permit intervention by 47th Street Photo under Rule 24(b) discussed *infra*.

precise points which the plaintiff in this case will need to establish in pursuing the remedy sought in this action. In having taken these positions as *amicus*, the Government may have jeopardized the strength or variety of choice of arguments available to it in the instant case. Whether or not this is true, there remains an appearance that the positions which 47th Street Photo may wish to argue will not be wholeheartedly represented. Second, this court is reluctant to view the Government's and 47th Street Photo's interests as coincident, where 47th Street Photo's interests are purely private, commercial ones relating to monetary and business concerns and where the Government's interests are public and enforcement oriented.

As to Kmart's alternative motion for permissive intervention, Rule 24(b) of this court provides that the court in its discretion may allow an applicant to intervene in an action: "(1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common." *See* Court of International Trade, R. 24(b). Kmart has requested alternatively that this court allow permissive intervention under Rule 24(b)(1) or under Rule 24(b)(2).

Rule 24(b)(2) provides that so long as application has been timely, the court may permit intervention where "an applicant's claim or defense and the main action have a question of law or fact in common." Court of International Trade, R. 24(b)(2). It is true that Kmart's defense and the main action have in common various questions of law and fact related to the validity of 19 U.S.C. § 1526 (Supp. V 1981).

In this case, 28 U.S.C. § 2631(j) provides additional authority for permissive intervention.[5] 28 U.S.C. § 2631(j)(2) states:

> [I]n those civil actions in which intervention is by leave of court, the Court of International Trade shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

It is clear that permissive intervention under § 2631 may be allowed or denied as this court in its discretion determines. 28 U.S.C. § 2631(j)(1); R. 24(b), Court of International Trade. Because the commercial interests which are not represented by the Department of Justice are represented by 47th Street Photo, and because of the various *amici curiae* participating, adequate discussion of the issues should occur even without the intervention of Kmart. Because of the potential for a vast number of applications for intervention by persons in the position of Kmart, permitting intervention does not appear to be in the interest of judicial economy. *Cf. Gerstle* v. *Continental Airlines, Inc.*, 466 F.2d 1374 (10th Cir. 1972). Moreover, be-

[5] 28 U.S.C. § 2631(j) provides for both permissive intervention as well as intervention as a matter of right, (*see* 28 U.S.C. § 2631(j)(1)(A)-(C)). Because the case presented does not fall within the exceptions listed in the statute, it arises under the general provision of 2631(j) which requires that a "person would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade." This general provision is permissive because intervention is allowed only "by leave of court." *See* 28 U.S.C. § 2631(j) (1963).

cause of this potential for a flurry of similarly situated persons to seek intervention on a similarly tenuous showing, it is quite possible that intervention by Kmart could unduly delay or prejudice the adjudication of the rights of the original parties. For these reasons, Kmart is denied permission to intervene under Rule 24(b)(2).

Nevertheless, Kmart has provided valuable briefing and argument in this matter and plaintiff has suggested that *amicus curiae* participation would be appropriate. The court agrees with that statement. Therefore, Kmart is granted the right to participate as *amicus curiae.*

(Slip Op. 84-37)

VIVITAR CORPORATION, PLAINTIFF *v.* THE UNITED STATES, ET AL., DEFENDANTS

Court No. 84-1-00067

Before RESTANI, *Judge.*

Dated April 4, 1984

Stein, Shostak, Shostak & O'Hara (Steven P. Kersner, Irwin P. Altschuler and *Donald S. Stein, Esqs.),* for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, and *Velta A. Melnbrencis, Esqs.,* for defendants.

James C. Tuttle, Esq. for proposed intervenor.

Howrey & Simon (Robert W. Steele, John F. Bruce, Roger C. Simmons, Kevin P. O'Rourke, Catherine M. Shea, Esqs.) for proposed intervenor.

Bass, Ullman & Lustigan (Robert Ullman, Esq.) for amicus.

Olwine, Connelly, Chase, O'Donnell & Weyher (William F. Sondericker, Esq.) for amicus.

OPINION AND ORDER

RESTANI, *Judge:* In this action, plaintiff, the owner of the Vivitar trademark, seeks a mandatory order directing the Customs Service to exclude from entry any merchandise bearing the Vivitar trademark that is imported without plaintiff's consent. Plaintiff contends in its complaint that 19 U.S.C. § 1526(a) and (b) (1982) and 15 U.S.C. § 1124 (1982) give it an unqualified right to demand such exclusion.[1]

Plaintiff licenses certain foreign subsidiaries to manufacture photographic equipment bearing the Vivitar trademark. These subsidiaries apparently are not licensed to market the goods they produce in the United States. Plaintiff asserts that various unrelated third parties are importing equipment bearing the Vivitar trademark that was manufactured by the foreign subsidiaries. Plaintiff con-

[1] 19 U.S.C. § 1526(a) and (b) read in relevant part:

[I]t shall be unlawful to import into the United States any merchandise of foreign manufacture if such merchandise, or the label * * * bears a trademark owned by a citizen of, or by a corporation . . . created or organized within, the United States, and registered in the Patent and Trademark Office . . . unless written consent of the owner of such trademark is produced at the time of making entry . . . Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture for violation of the customs laws.

At oral argument, and in its reply brief, plaintiff essentially abandoned its claim under § 1124.

tends that these importations are illegal, absent Vivitar's consent. It appears that the Customs Service does not prohibit these imports. The Customs Service interprets § 1526(a) and (b) to deny trademark owners the right to require the exclusion of trademarked goods manufactured abroad when the trademark owner has authorized the foreign manufacturer to apply the trademark to the goods. 19 C.F.R. § 133.21 (1983).[2] Plaintiff contends that the Customs Service's interpretation of § 1526(a) and (b) is contrary to law.

Defendants now move to dismiss the action for want of subject matter jurisdiction.

When jurisdiction is challenged, plaintiff has the burden of demonstrating that jurisdiction exists. *United States* v. *Biehl*, 3 CIT 158, 539 F.Supp. 1218 (1982).

At the threshold, plaintiff must establish that its cause of action arises out of a customs or international trade law. This court's jurisdiction is intended to reach only international trade disputes. H.R. Rep. No. 96-1235, 96th Cong., 2d Sess., 20 (1980), *reprinted in U.S. Code Cong. & Admin. News.* 3730 (1980) ("House Report").

Defendants' arguments against jurisdiction are based on the contentions that this case arises primarily out of the trademark laws, and jurisdiction over trademark cases must lie in the district courts rather than in the Court of International Trade. Both of these are unpersuasive. The contention that all cases related to trademarks must be heard in the district courts has been repeatedly rejected. *Manufacture De Machines Du Haut-Rhin* v. *Von Raab*, 6 CIT —, 569 F. Supp. 877 (1983); *Manufacture De Machines Du Haute-Rhin* v. *International Armament Corporation*, Civil Action No. 82-1114-A (E.D.V.I. 1983); *Lois Jeans & Jackets, U.S.A., Inc.* v. *United States*, 5 CIT —, 566 F. Supp. 1523 (1983); *cf. Schaper Manufacturing Co.* v. *Regan*, 5 CIT —, 566 F. Supp. 894 (1983) (case involving copyright issues).[3] The district courts generally have jurisdiction over trademark cases. 28 U.S.C. § 1338 (1976). This court, however, has jurisdiction generally over cases arising out of international trade disputes. House Report at 34. This case and the cases cited above arise out of circumstances where an international trade dispute involves trademark issues.[4]

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[2] 19 C.F.R. § 133.21 reads in relevant part:

(b) *Identical trademark.* Foreign-made articles bearing a trademark identical with one owned and recorded by a citizen of the United States or a corporation or association created or organized within the United States are subject to seizure and forfeiture as prohibited importations.

(c) *Restrictions not applicable.* The restrictions set forth in paragraphs (a) and (b) of this section do not apply to imported articles when:

(1) Both the foreign and the U.S. trademark or trade name are owned by the same person or business entity;

(2) The foreign and domestic trademark or trade name owners are parent and subsidiary companies or are otherwise subject to common ownership or control (see §§ 133.2(d) and 133.12(d));

(3) The articles of foreign manufacture bear a recorded trademark or trade name applied under authorization of the U.S. owner.

[3] In *Parfum Sterns, Inc.* v. *United States Customs Service*, Case No. 83-1116-CIVSMA (S.D. Fla. 1983), the district court held that it had jurisdiction of an action similar to the instant case. The court there did not discuss the jurisdiction of the Court of International Trade, and this court declines to follow that decision.

[4] As the Ninth Circuit has noted in a different context, "Customs Court jurisdiction is not defeated because a statute or regulation serves other ends in addition to recognized customs purposes, so long as there exists 'a substantial relation to traditional customs purposes.'" *Cornet Stores* v. *Morton*, 632 F.2d 96, 99 (9th Cir. 1980), *citing Jerlian Watch Co.* v. *United States Department of Commerce*, 597 F.2d 687, 691 (9th Cir. 1979).

There is no simple formula for determining whether a given case is a trademark case or an international trade case. The *Schaper* case, however, offers a useful approach for analyzing whether such a case belongs in this court or the district courts. *Schaper* arose out of a dispute concerning a bond submitted by an American copyright holder during the pendency of a copyright infringement action against an importer in the district court. In *Schaper,* the court stated:

> In determining whether a cause of action might be embraced by the jurisdictional grant bestowed upon this court by the Congress, *it is necessary that the gravamen of the complaint be determined.* Although the complaint in the instant action alleges jurisdictional support under 28 U.S.C. § 1581(i) and 17 U.S.C. §§ 602, 603 [relating to importation of merchandise infringing on copyrights], from the allegations contained in the complaint as well as from all the proceedings had before this court, it is manifest that *the thrust of the grievance alleged and the relief sought by the plaintiff relates to the regulations promulgated by customs and their administration and enforcement* (emphasis added).

Schaper, 566 F. Supp. at 896.

In this case, the thrust of plaintiff's grievance is that Customs Service's administration and enforcement of § 1526 (a) and (b) is improper. It allows importers to import goods bearing plaintiff's trademark.

Plaintiff is not alleging that these importers are infringing its trademark.[5] Trademark infringement is consistently defined in trademark law as the use of reproductions, copies, counterfeits of colorable imitations of genuine trademarks, 15 U.S.C. §§ 1114, 1118, 1124, 1127, *i.e.,* use of a trademark on goods not entitled to bear the trademark, or use of a mark deceptively similar to a registered trademark. Here, plaintiff concedes that the goods at issue properly bore the Vivitar trademark.[6] The central issue in this case is the regulation of international trade in goods bearing genuine trademarks, rather than trademark law.

The right to regulate the use of a trademark on genuine goods arises only in international trade transactions. No other use of a genuine trademark on goods entitled to bear the mark is restricted. The Customs Service's regulation of imports of genuine trademark goods is uniquely a concern of international trade law. This contrasts sharply with trademark infringement which is illegal in all forms of commerce.

It is sensible for this court to hear the present action because the dispute involves a statute and a Customs Service regulation in need of a uniform national interpretation. This court's basic purpose is to provide "a comprehensive system of judicial review of

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[5] For this reason *Montres Rolex, S.A.* v. *Snyder,* 718 F.2d 524 (2d Cir. 1983); *Bally/Midway Mfg. Co.* v. *Regan,* 5 CIT —, 565 F. Supp. 1045 (1983); and *Kidco, Inc.* v. *United States,* 4 CIT 103 (1982) are distinguishable. The gravamen of these actions was copyright or trademark infringement.

[6] As noted above, plaintiff has abandoned all claims arising from trademark infringement under 15 U.S.C. § 1124.

civil actions arising from import transactions, utilizing the specialized expertise of the [Court of International Trade] * * * [to] ensure * * * uniformity in the judicial decisionmaking process." House Report at 20. International trade law and Customs Service regulations must have a uniform national interpretation to provide a degree of certainty to those involved in complex international trade transactions. This court's exclusive jurisdiction over international trade litigation helps avoid conflicting interpretations of international trade law. All parties to this litigation recognize that international trade in genuine trademark goods is an important international economic issue. Conflicting interpretations of American law in this area would obviously create a great deal of unnecessary confusion and uncertainty.[7] Furthermore, Customs Service regulations governing international trade are particularly within this court's expertise.

Although the court finds that this is an international trade dispute, this fact standing alone does not conclusively establish that this action falls within the statutes governing the jurisdiction of this court. As defendant correctly notes, not all international trade disputes are within this court's jurisdiction. *United States* v. *Biehl,* 3 CIT 158.

Plaintiff, contending that this court has jurisdiction pursuant to 28 U.S.C. § 1581(i) (1982), advances two arguments.[8] First, plaintiff argues that this court would have jurisdiction under § 1581(a) to hear a protest of any exclusion of merchandise pursuant to § 1526 (a) and (b). Therefore, plaintiff argues, this court has jurisdiction pursuant to § 1581(i)(4) to consider claims arising out of Customs Service regulations governing the administration and enforcement of exclusions pursuant to § 1526 (a) and (b). Second, plaintiff argues that § 1526 (a) and (b) is a law related to revenue from imports within the meaning of § 1581(i)(1), and therefore under § 1581(i)(4) this court has jurisdiction over any claim arising out of the administration and enforcement of § 1526 (a) and (b). The court generally agrees with the first of plaintiff's arguments for the reasons stated below.[9]

Congress intended § 1581(i) as a plenary grant of residual jurisdiction to this court over international trade litigation. The House

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[7] Additionally, importers might seek to utilize one port over another if the law in one district was particularly favorable as to this or any other question of international trade law.

[8] 28 U.S.C. § 1581(i) reads:

> In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)-(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—
>
> (1) revenue from imports or tonnage;
>
> (2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;
>
> (3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or
>
> (4) administration and enforcement with respect to the matters referred to in paragraphs (1)-(3) of this subsection and subsections (a)-(h) of this section.

[9] The court does not accept plaintiff's argument that any law which results in the importation or exclusion of goods is a law relating to revenues from imports. Such a reading of § 1581(i)(1) would render much of the rest of § 1581(i) meaningless.

Report of the Customs Courts Act of 1980 makes clear the breadth of § 1581(i):

> Under * * * section 1581(i) * * * the Court of International Trade has jurisdiction over those civil actions which arise out of a law of the United States pertaining to international trade.

House Report at 34. *See Sacilor, Acieries et Laminoirs de Lorraine* v. *United States*, 3 CIT 191, 542 F. Supp. 1020 (1982).

Section 1581(i) grants this court residual jurisdiction over suits against the United States arising out of the specific categories of laws described in § 1581(i) (1)–(3); and, in § 1581(i)(4), broad residual jurisdiction over "the administration and enforcement of the matters referred to in" § 1581(a)–(h), (i) (1)–(3). In the present case, this court has jurisdiction since plaintiff's claim arises out of administration and enforcement of the matters referred to in § 1581(a) and § 1581(i)(3).

Plaintiff here contests the Customs Service's decisions concerning exclusions under 19 U.S.C. § 1526 (a) and (b). Normally an aggrieved party could contest Customs Service exclusion decisions under the customs laws only through filing a protest. *United States* v. *Uniroyal, Inc.*, 69 CCPA 179, 687 F.2d 467 (1982). As this court has noted, the proper procedure to contest an exclusion under § 1526 (a) and (b) is by filing a protest, then invoking this court's jurisdiction under § 1581(a) to contest the protest denial. *Manufacture De Machines Du Haut-Rhin* v. *Von Raab*, 569 F. Supp. 877.[10] However, here plaintiff is allegedly aggrieved by the Customs Service's *failure* to exclude merchandise from entry. 19 U.S.C. § 1514 makes it clear that a decision not to exclude merchandise is not protestable. Since protest procedures are not available, plaintiff can obtain relief in this court only if its claim is covered by the jurisdictional grant in § 1581(i).

Section 1581(i)(4) gives this court jurisdiction over claims arising out of administration and enforcement with respect to the matters referred to in § 1581(a).[11] The matters encompassed by § 1581(a) are the matters set forth in 19 U.S.C. §§ 1514 and 1515. Thus, § 1581(i)(4) is a residual independent jurisdictional basis for litigating Customs Service administration and enforcement of the substantive matter that may be the subject of a protest, but where the protest remedy is inappropriate or unavailable. In this case plain-

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[10] 19 U.S.C. § 1514(a)(4) permits an aggrieved party to protest "the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws * * *."

[11] 28 U.S.C. § 1581(a) reads:

> The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.

Section 515 of the Tariff Act of 1930 (19 U.S.C. § 1515) sets out the procedures for administrative review of protests and indicates that 19 U.S.C. § 1514 defines the substantive law that serves as the basis for § 1581(a) protest jurisdiction. 19 U.S.C. § 1514 reads in relevant part:

> [D]ecisions of the appropriate customs officer * * * as to
>
> (4) The exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 1337 of this title
>
> shall be final and conclusive * * * unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest is commenced in the United States Court of International Trade * * *

tiff challenges the administration and enforcement of exclusions under the customs laws, *i.e.*, 19 U.S.C. § 1526(a) and (b).[12] But there has been no protestable exclusion under 19 U.S.C. § 1514(a)(4). Therefore, § 1581(i)(4) gives this court jurisdiction over plaintiff's claim.

The statutory scheme and the legislative history of § 1581(i) impose important limits on this broad jurisdictional grant. Section 1581(i) does not create new causes of action, it only defines the demarcation between the jurisdiction of this court and the district courts. House Report at 33. *See Carlingswitch, Inc.* v. *United States*, 5 CIT —, 560 F. Supp. 46 (1983), *aff'd* 720 F.2d 656 (Fed. Cir. 1983). And § 1581(i) cannot be used to evade the protest procedures in any case where a protest could be filed, except where the protest remedy is manifestly inadequate. *United States Cane Sugar Refiners' Association* v. *Block*, 69 CCPA 172, 683 F.2d 399 (1982).[13] Within these constraints, a broad application of § 1581(i)(4) is essential to ensure that this court remains the forum for adjudicating all disputes arising out of the laws of international trade, as Congress intended.

The legislative history makes clear that Congress intended § 1581(i)(4) to give this court broad residual jurisdiction over cases arising out of the administration and enforcement of the substantive international trade law that is also the subject matter of the more specific jurisdictional provisions in section 1581. In discussing § 1581(i)(4)'s relationship to the antidumping and countervailing duty statutes, the House Report states:

> [S]ubsection (i), and in particular paragraph (4), makes clear that the court is not prohibited from entertaining a civil action relating to an antidumping or countervailing duty proceeding so long as the action does not involve a challenge to a determination specified in section 516A of the Tariff Act of 1930.

House Report at 48. As this court has noted:

> [u]nless these preceding jurisdictional subsections [1581(a)–(h)] express or contain in their manifest legislative history, a limitation on jurisdiction of other related actions, they do not operate to diminish the broad grant of jurisdiction contained in section 1581(i).

Sacilor, 3 CIT at 193. In *Sacilor*, the court held that § 1581(i) conferred upon this court jurisdiction over a case arising out of an antidumping investigation. The court held that the antidumping laws are within this court's plenary jurisdiction over international trade law, and the case was not reviewable through normal procedures for administrative and judicial review of antidumping cases.

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[12] 19 U.S.C. § 1526(a) and (b) expressly state that an importation outlawed by these sections is a "violation of the *customs laws*." (Emphasis added).

[13] Neither of these constraints limit plaintiff's action here. Prior to 1980, a cause of action of this type would have been within the district court's general federal question jurisdiction. 28 U.S.C. § 1331. And, as noted above, plaintiff in this action cannot obtain a protestable decision under 19 U.S.C. § 1514(a).

See also Ceramica Regiomontana S.A. v. *United States,* 6 CIT —, 557 F.Supp. 596 (1983).

A more narrow reading of § 1581(i)(4) would essentially render it meaningless when applied to § 1581(a). If § 1581(i)(4), as it relates to § 1581(a), were limited to cases arising from the administration and enforcement of protests then the jurisdictional grant in § 1581(i)(4) would duplicate the jurisdictional grant in § 1581(a). Cases arising from the filing, review, and denial of protests under 19 U.S.C. §§ 1514 and 1515 have to be brought pursuant to § 1581(a). *See Uniroyal* v. *United States,* 687 F.2d 467. Section 1581(i) was not meant to be so limited. As Judge Nies noted in *Uniroyal,* "the broad subject matter jurisdiction of the court under § 1581(i) may be invoked only when no other remedy is available or the other remedies provided under other provisions of 28 U.S.C. § 1581 are manifestly inadequate." *Id.* at 475 (concurring opinion). There are no remedies available in this court to plaintiff except those provided by § 1581(i).

This court also has jurisdiction over plaintiff's cause of action since 19 U.S.C. § 1526 (a) and (b) involves administration and enforcement of "other quantitative restrictions" within the purview of 28 U.S.C. § 1581(i)(3).

Section 1581(i)(3) on its face indicates that the term quantitative restrictions is meant to cover a number of import restrictions. The term embraces embargoes since the section expressly refers to embargoes and other quantitative restrictions. This court's decisions have also indicated that quotas generally are quantitative restrictions. *United States Cane Sugar Refiners' Association* v. *Block,* 3 CIT 196, 544 F.Supp. 883(1982), *aff'd* 69 CCPA 172, 683 F.2d 399 (1982); *Sanho Collections, Ltd.* v. *Chasen,* 1 CIT 6, 505 F.Supp. 204 (1980). Finally, the subsection makes clear that statutes outlawing the importation of certain goods are within the ambit of § 1581(i)(3) as long as the ban is not for reasons of public health and safety.

In effect, § 1581(i)(3) gives this court jurisdiction over cases arising under the customs laws where the importation of goods is limited to a specific quantity. This includes a statutory limit of zero in the case of embargoes and statutes outlawing the importation of certain merchandise. Section 1526(a) provides just such a statutory limit: it outlaws the importation of all trademarked goods under certain circumstances.

Congress' intent to include actions arising out of customs laws outlawing certain imports within this court's § 1581(i)(3) jurisdiction is evident from the express language of the statute and the legislative history. This court has jurisdiction over actions arising out of laws imposing "quantitative restrictions on the importation of merchandise for reasons other than public health and safety." 28 U.S.C. § 1581(i)(3). The legislative history clearly indicates that Congress used the limiting language to exclude from this court's jurisdiction suits arising under the Toxic Substances Control Act, 15

U.S.C. § 2600 *et seq.* (1982), and the Federal Food, Drug and Cosmetics Act, 21 U.S.C. § 300 *et seq.* (1982). Both of these statutes contain provisions totally outlawing importation of certain unhealthy and dangerous goods, 15 U.S.C. § 2612, 21 U.S.C. § 381 (1982). Congress intended that the district courts, which have jurisdiction over all other cases arising under these laws, should also have jurisdiction over cases involving imported goods arising under these laws to prevent different standards from evolving for imported and domestic goods. House Report at 47–48.[14] The House Report states that Congress explicitly adopted the limiting language of § 1581(i)(3) "in an effort to remove any confusion over the jurisdiction of the Court of International Trade regarding this or similar issues." House Report at 47–48.

Therefore, since Congress needed to explicitly exclude from this court's jurisdiction statutes outlawing certain imports, Congress obviously intended § 1581(i)(3) to give this court jurisdiction generally over statutes prohibiting importation of merchandise. Any other reading of §1581(i)(3) would render the limiting language of §1581(i)(3) ineffectual. An interpretation of a statute that causes any part of it to be meaningless is strongly disfavored, "every effort [must be] made to give full force and effect to all the language contained therein." *Dart Export Corp.* v. *United States,* 43 CCPA 64, 74 (1956), *cert. denied* 352 U.S. 824 (1956).

Also Congress' intent to give this court jurisdiction over laws outlawing importation can be inferred through basic principles of statutory construction. Since, in § 1581(i)(3), Congress expressly eliminated one type of statute outlawing imports, by inference Congress intended other statutes barring imports to be included within § 1581(i)(3). Such a construction arises from the principle of *expressio unius est exclusio alterius. United States* v. *Douglas Aircraft Co.,* 62 CCPA 53, 510 F.2d 1387 (1975). This principle is only an aid to construction and will not be applied to defeat Congressional intent. *Di Jub Leasing Corp.* v. *United States,* 1 CIT 42, 505 F.Supp. 1113 (1980). But, unlike *Di Jub,* applying this principle is consistent with Congress' overriding intent that the jurisdictional grant in § 1581(i) be read broadly to ensure that this court has jurisdiction over causes of action arising out of the laws of international trade. *Id.* at 47.[15]

Therefore, for the reasons stated above, plaintiff's cause of action arising out of 19 U.S.C. § 1526 (a) and (b) is a dispute arising out of the laws of international trade, and this court has jurisdiction pursuant to 28 U.S.C. § 1581(i) (3) and (4). Defendant's motion to dismiss is denied as to plaintiff's claim under 19 U.S.C. § 1526 (a) and

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[14] As discussed above, CIT jurisdiction over § 1526 (a) and (b) disputes does not present this problem.

[15] In *Di Jub,* applying the principle would have improperly restricted this court's jurisdiction over international trade cases.

(b). The motion to dismiss is granted as to plaintiff's claim under 15 U.S.C. §1124.[16]

(Slip Op. 84-38)

TOYOTA MOTOR SALES, U.S.A., INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Consol. Court No. 81-1-00048

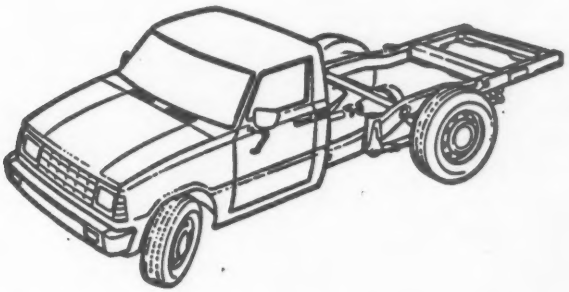
Before: MALETZ, *Senior Judge.*

OPINION AND ORDER

(Dated: April 10, 1984)

Cladouhos & Brashares, David D. Laufer, of counsel, (*Harry W. Cladouhos, William C. Brashares, Paul M. Laurenza, Mari-Anne Pisarri* on the briefs) for plaintiff.
Richard K. Willard, Acting Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch; *Joseph I. Liebman,* International Trade Field Office, of counsel (*Saul Davis* and *Michael P. Maxwell* on the brief) for defendant.

MALETZ, *Senior Judge:* This case concerns the proper classification of automotive cab chassis imported from Japan from January 1980 through July 1981. The chassis component of the import consists of a frame, suspension system, wheels, engine, and steering mechanism. The cab portion contains seats, a floor, doors, back panel, instrument panel, windows, climate control system, radio, and trim. When combined the cab and chassis comprise a fully operable motor vehicle. The following depicts a typical cab chassis as it looks upon importation.



After importation, a cargo-carrying, work-performing or passenger-carrying adjunct is added to the rear of the vehicle. When that adjunct is a cargo box the vehicle becomes a pickup truck. Other

[16] Ordinarily this court would consider transferring plaintiff's dismissed claim to the appropriate district court. 28 U.S.C. § 1631. However, plaintiff's oral argument and reply brief make clear that its claim is not substantially based on 15 U.S.C. § 1124. Therefore, transfer would be pointless and not in the interests of justice.

configurations render the vehicle a camper or recreational vehicle. In the vast majority of cases cab chassis are completed into pickup trucks.

These cab chassis were classified by the Customs Service under item 692.02 of the Tariff Schedules of the United States (TSUS) as unfinished automobile trucks valued at $1,000 or more. *See* General Interpretative Rule 10(h). The dutiable rate for item 692.02 is 25 percent ad valorem. *See* item 945.69 of the Appendix to the TSUS. Plaintiff Toyota Motor Sales maintains that the imports are classifiable under item 692.20, the eo nomine provision for automobile truck chassis, at a rate of 4 percent ad valorem. Alternatively, Toyota claims the cab chassis are classifiable under item 692.10 as "other" motor vehicles for the transport of persons or articles at the rate of 2.8 percent ad valorem.

The TSUS provisions for the classification and various claims are as follows:

GENERAL HEADNOTES AND RULES OF INTERPRETATION:

10. *General Interpretative Rules.*—For the purposes of these schedules—

* * * * * * *

(h) unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished;

* * * * * * *

Schedule 6, Part 6, Subpart B:

Motor vehicles (except motorcycles) for the transport of persons or articles:

	Automobile trucks valued at $1,000 or more and motor buses:	
692.02	Automobile trucks	8.5% ad val.[1]
*	* * * * * *	
692.10	Other	2.9% ad val.
*	* * * * * *	
	Chassis, bodies (including cabs), and parts of the foregoing motor vehicles:	
	Bodies (including cabs) and chassis:	
692.20	For automobile trucks and motor buses.	4% ad val.

* * * * * * *

[1] Rate temporarily increased. See item 945.69 in part 2B, Appendix to Tariff Schedules.

Appendix to the Tariff Schedules, Part 2, Subpart B:

945.69	Automobile trucks valued $1,000 or more (provided for in item 692.02).	25% ad val.

Although Toyota has launched a multipronged attack, the essence of its argument is that cab chassis cannot be classified as trucks under item 692.02 because they are not within the common meaning of "truck," but come within the common meaning of "chassis." The court is not convinced and believes that the government's classification is correct. Accordingly, judgment shall enter for defendant.

BACKGROUND

This action had its genesis in 1963 with the so-called "Chicken War Proclamation." [1] That proclamation changed the rate for automobile trucks valued over $1,000 from 8.5 percent to 25 percent. While not salient to Toyota in 1963, it was soon to figure prominently in Toyota's U.S. market.

Prior to 1971 Toyota pickup trucks imported into the United States were valued under $1,000 and, consequently, were classified under item 692.10 as other motor vehicles at the then prevailing rate of 3.5 percent ad valorem. Because the value of its U.S.-destined pickup trucks would soon exceed $1,000, Toyota wrote to Customs on November 13, 1971, seeking an advisory ruling as to the classification of its pickup trucks if imported as a cab chassis, i.e., without the rear bed assembly. Toyota suggested in that letter that the cab chassis be classified under item 692.10—as other motor vehicles valued under $1,000. It further requested that the rear bed assembly be classified under item 692.20 as chassis or bodies for automobiles trucks, or under item 692.27 as other parts of motor vehicles. Although Toyota specifically requested that only the rear bed assembly—the cargo box—be classified under item 692.20 as a body for automobile trucks, Customs, in a reply letter dated March 22, 1971, advised Toyota that the imported cab chassis would be classifiable as chassis under item 692.20 at the then prevailing rate of 5 percent ad valorem. Toyota's cab chassis were so classified and continued to be so classified until 1980.

In that year this admittedly established and uniform administrative practice was changed by Customs in T.D. 80-137, 45 Fed. Reg. 35,057 (1980). Relying on the principles announces six months earli-

[1] Effective January 7, 1964, Presidential Proclamation 3564, 77 Stat. 1035 (1963), increased the duty on automobile trucks imported into this country as partial retaliation for the European Economic Community's "unreasonable import restrictions" on imports of poultry from the United States.

er in *Daisy-Heddon* v. *United States*, 66 CCPA 97, C.A.D. 1228, 600 F.2d 799 (1979), Customs concluded that its past practice was clearly wrong. Briefly, *Daisy-Heddon* held that substantial completion, not essentiality, was the test to be applied in determining whether an article could be classified as unfinished under General Interpretative Rule 10(h). Relying on the guidelines set forth in *Daisy-Heddon*, Customs determined that the lightweight cab chassis imported by Toyota—those weighing less than 6,000 lbs.—were unfinished automobile trucks dutiable under item 692.02. Customs began classifying plaintiff's imported lightweight cab chassis under that item number. This action soon followed.[2]

The central issue at the trial was whether a cab chassis is a "chassis" within the common meaning of that term as used in item 692.20 of the TSUS. The testimony of various automotive industry experts focused on industry definitions of such terms as "chassis," "cab," "cab chassis," "truck" and "body." Not surprisingly, the testimony was highly controverted on the issue of whether a cab chassis is a "chassis" under industry nomenclature. A flood of exhibits depicting cab chassis denominated as "chassis" were introduced by plaintiff. The government offered an offsetting number of its own exhibits showing cab chassis denominated as "trucks."

Plaintiff's witnesses, consisting primarily of engineers, sales personnel and planning managers from Toyota, Ford Motor Company, General Motors and Chrysler, testified in the main that the imported cab chassis was considered a "chassis" within the industry. Defendant's witnesses were likewise represented by various segments of the truck industry. There was a consensus among the government's witnesses that a cab chassis is not a chassis as that term is understood within the industry, with some of the government's witnesses considering a cab chassis to be an incomplete truck, others believing it to be a truck.

Despite the contrariety of opinion, on one point all witnesses agreed—a pickup truck consists of three major components: the chassis, the cab and the cargo box. By stipulation the parties further agreed that 97.2 percent of imported cab chassis are completed into pickup trucks by the addition of a cargo box and that the imported cab chassis comprise 90 percent of a complete truck in terms of parts, labor and value.

Against this background, the court considers the threshold question of the common meaning of "chassis."

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[2] In its complaint Toyota not only challenges the government's classification as being incorrect as a matter of law, but also alleges (1) that the classification is arbitrary and capricious, and (2) that the government's past practice of classifying cab chassis as chassis is not clearly wrong. *See* discussion *infra*. Inasmuch as this action involves a trial *de novo*, not simply judicial review of an administrative record, *compare* 28 U.S.C. § 2640(a)(2) *with* 19 U.S.C. § 1516a(b) (1982), allegations of arbitrary and capricious conduct are misplaced here. *See O'Dwyer* v. *Commissioner*, 266 F.2d 575 (4th Cir), *cert. denied*, 361 U.S. 862 (1959).

As to whether the government's past practice was clearly wrong, this portion of plaintiff's complaint is at best duplicative of and certainly subsumed by that count of its complaint challenging the legal correctness of the government's classification. Again, that is a matter to be considered *de novo* by the court.

For these reasons, counts II and III of Toyota's complaint were dismissed at a pre-trial conference.

COMMON MEANING

One of the pivotal issues in this case is whether the imported cab chassis comes within the common meaning of the eo nomine provision for chassis in item 692.20. The law regarding common meaning is well-established. First, tariff terms are construed in accordance with their common and commercial meaning, *Nippon Kogaku (USA), Inc.* v. *United States,* 69 CCPA 89, 673 F.2d 380 (1982), and it is presumed that Congress framed the tariff acts according to the general usage and denomination of the trade. *Nylos Trading Co.* v. *United States,* 37 CCPA 71, C.A.D. 422 (1949). Second, the common meaning of a tariff term is a question of law to be determined by the court. *American Express Co.* v. *United States,* 39 CCPA 8, C.A.D. 456 (1951). In answering the question of a term's common meaning courts may consult dictionaries, lexicons, scientific authorities and other reliable sources as an aid. *C.J. Tower & Sons* v. *United States,* 69 CCPA 128, 673 F.2d 1268 (1982). Third, the meaning to be given a descriptive term used in a tariff act is that which it had at the time of the law's enactment. *United States* v. *O. Brager-Larsen,* 36 CCPA 1, 3–4, C.A.D. 388 (1948). A subsequent definition may not be used to expand the meaning of a term, but is an aid to clarifying it. *Sears Roebuck & Co.* v. *United States,* 46 CCPA 79, 82, C.A.D. 701 (1959).

With these principles in mind, the court begins by noting the definition of chassis contained in the Handbook of the Society of Automotive Engineers (1963) (the SAE Handbook). Under the section entitled, "Commerical Motor Vehicle Nomenclature—SAE J687a," "motor vehicle chassis" is defined as

> the basic operative motor vehicle including engine, frame, and other essential structure and mechanical parts, but exclusive of body and all appurtenances for the accommodation of operator, property or passengers, and/or appliances or equipment related to other than locomotion and control. If a cab is included, the designation should be: MOTOR VEHICLE CHASSIS WITH CAB.

The SAE definition makes clear that a cab is not part of a chassis, specifically excluding "all appurtenances for the accommodation of operator, property or passengers." The record is abundantly clear that the cab portion of a cab chassis is that appurtenance which accommodates the operator and passengers. Furthermore, the definition specifically indicates that "[i]f a cab is included" the article is not a chassis but rather a "MOTOR VEHICLE CHASSIS WITH CAB," indicating that the term "chassis," standing alone, does not include a cab.

The court considers this SAE definition to be a highly authoritative source of industry nomenclature, particularly since the SAE is an organization which represents all aspects of the automotive industry. The definition is the work product of the SAE Commercial Vehicle Nomenclature Committee whose purpose it is to formulate standard nomenclature within the truck industry. The process

begins with a staff engineer who drafts a definition. The Committee reviews this draft over an extensive period of time, and then circulates it to a broad cross section of the industry, including governmental agencies, for review before final publication in the SAE Handbook. Considering the great care and exhaustiveness of the process, the SAE definition is entitled to great weight.

What is more, not only is the cab excluded from the SAE definition of chassis, but every lexicographic definition consulted by the court likewise omitted it. The following definitions of chassis, dating from the enactment of the TSUS, are overwhelmingly consistent, none describing the imported cab chassis as a chassis.

First, Funk & Wagnalls Standard Dictionary of the English Language (Int'l ed. combined with Britannica World Language Dictionary 1963), defines a chassis as follows:

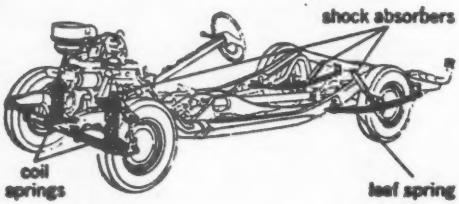
> The frame and springs of a motor vehicle: also, all other mechanical parts of the car, including the wheels and motor.

In 2 Encyclopedia Americana 834 (Int'l ed. 1973), chassis is defined as

> the complete car minus the body. The chassis therefore consists of the engine, power-transmission system, and suspension system all suitably attached to, or suspended from, a structurally independent frame * * *.

And in 1 McGraw-Hill Encyclopedia of Science and Technology 750, 754 (1977), the following definition and depiction of a chassis are found:

> A bare vehicle (minus body) with frame, power plant, power train, brakes, and wheels, and cooling, fuel, exhaust, electrical, lubrication, steering, and suspension systems assembled and operational.



Other lexicographic sources consulted by the court corroborate these three definitions. *See, e.g.,* Webster's New Collegiate Dictionary (7th ed. 1967); McGraw-Hill Dictionary of Scientific & Technical Terms (2d ed. 1978); 16 Collier's Encyclopedia 638 (1979); 2 The New Encyclopedia Britannica 776 (micropedia 1982).

While it appears clear to the court, on the strength of these sources alone, that a cab chassis is not a chassis, the parties nevertheless presented a wealth of testimony in an effort to show that industry usage of the terms in issue here supports their respective positions. Although this record may serve as an aid, it is not, of course, binding. *See, e.g., Tropical Craft Corp.* v. *United States,* 45 CCPA 59, 61, C.A.D. 673 (1958) (testimony as to common meaning advisory only, and insufficient to overcome contrary dictionary definitions); *Package Machinery Co.* v. *United States,* 41 CCPA 63, 66, C.A.D. 530 (1953) (testimony as to common meaning accorded such weight as court deems proper). The record is illuminating insofar as the court's understanding of the background surrounding this controversy. But the evidence is at best in virtual equipoise; at worst it is a controverted snarl.

Toyota's seven witnesses testified that the term "chassis" was commonly used in the industry to describe a cab chassis as well as other chassis configurations. This testimony was documented by numerous references to cab chassis in trade literature, automotive histories, advertising brochures and certain government specifications. The government, in opposition, produced ten witnesses who testified that the cab chassis was not a "chassis," but was instead a truck, either complete or incomplete. The government likewise documented this testimony through the use of trade literature, automotive histories and advertising brochures.

To highlight just how conflicting the evidence is one need only consider the trade literature offered at trial. For example, a truck data book prepared by General Motors in 1964 describes a chassis as

> 1—Entire vehicle as produced by the factory when no body is included (Cab, frame, power plant, drive line, suspensions, axles, wheels and tires); 2—same as number 1 except excluding cab and other sheet metal; or 3—Frame only with brackets, bumper and other miscellaneous parts directly attached to the frame.

By contrast, a truck facts book prepared by the Ford Motor Company in 1978 defines a chassis as

> [t]he basic truck consisting of frame, springs, axles, wheels, tires, engine and steering wheel (without sheet metal, cab or body).

A Department of Defense publication, on the other hand, entitled "Federal Item Name Directory for Supply Cataloging (1982)," defines "chassis" as follows:

> A self-propelled wheeled vehicle undercarriage consisting essentially of the frame and power trains, with or without cab, designed primarily to mount a suitable body for transporting supplies and/or equipment.

Also introduced were countless advertisements dating from the birth of the industry to the present containing depictions of cab

chassis with the caption "chassis," and a countervailing number of similar pictorial examples of cab chassis labelled "trucks."

The only credible explanation for this seemingly hopeless conflict is that the terms "chassis," "cab chassis" and "truck" are frequently used very loosely, at times interchangeably, throughout the automotive industry, depending on which segment of the industry is the focus, e.g., the parts, service and repair sector; manufacturing and assembly; or engineering. Given these considerations, the court finds these examples of industry usage of little value or assistance.

From all of this, the court believes that the lexicographic sources point the way—the common meaning of chassis does not include a cab chassis. This conclusion finds strong support in the legislative history to item 692.20.

Legislative History

As previously indicated, Congress is presumed to know the common meaning of terms and to have framed tariff terms accordingly. *See, e.g., Nippon Kogaku (USA), Inc.* v. *United States,* 69 CCPA 89, 673 F.2d 380 (1982); *United States* v. *C. J. Tower & Sons,* 48 CCPA 87, C.A.D. 770 (1961). Where a contrary legislative intent appears, however, the common meaning is supplanted for customs purposes. *Garay & Co.* v. *United States,* 83 Cust. Ct. 6, C.D. 4813 (1979). Here, the legislative history shows (1) that Congress used the term "chassis" as it is ordinarily understood, and (2) that a "cab chassis" is not properly classifiable as a chassis. Indeed, an examination of the legislative history indicates that cab chassis should be classified as unfinished trucks. Particularly telling in this connection is the Brussels Nomenclature.

Courts and Congress recognize that the Nomenclature for the Classification of Goods in Customs Tariffs (generally referred to as the "Brussels Nomenclature" or simply "Brussels") is a highly probative source for ascertaining legislative intent, especially where the language of the TSUS and Brussels are similar. *See, e.g., United States* v. *Abbey Rents,* 66 CCPA 2, 4 n.5, C.A.D. 1213, 585 F.2d 501, 504 n.5 (1978); *Schwarz* v. *United States,* 57 CCPA 19, C.A.D. 971, 417 F.2d 1391 (1969). *See also* Tariff Classification Study Submitting Report 8 (Nov. 15, 1960) ("The 'Brussels Nomenclature' [and one other classification manual] exerted the greatest influence on the arrangement of the proposed revised schedules [i.e., the TSUS]."). The only condition precedent to using Brussels is the existence of a nexus between the language in Brussels and its counterpart in the TSUS. *Mattel, Inc.* v. *United States,* 65 Cust. Ct. 616, 625, C.D. 4147 (1970). *See also Abbey Rents; S.G.B. Steel & Scaffolding Co.* v. *United States,* 82 Cust. Ct. 197, C.D. 4802 (1979). That nexus is present here. In fact, this court has previously used Brussels to discern the legislative intent surrounding this very subpart of the TSUS. *The Carrington Co.* v. *United States,* 70 Cust. Ct. 105,

112, C.D. 4415, 358 F. Supp. 1286, 1291–92 (1973), *aff'd*, 61 CCPA 77, C.A.D. 1126, 497 F.2d 902 (1974).

Turning to an examination of Brussels, it provides as follows regarding motor vehicles:

> Heading 87.02—Motor Vehicles For The Transport of Persons, Goods Or Materials (Including Sports Motor Vehicles, Other Than Those Of Heading No. 87.09 [i.e., motorcycles]).

By comparison, the main superior heading which encompasses TSUS item 692.02 (the provision under which the cab chassis were classified), reads as follows:

> Motor vehicles (except motorcycles) for the transport of persons or articles.

Brussels and the TSUS are thus virtually identical vis-a-vis their respective main headings. There is an indisputable nexus between the two. Brussels continues:

> Heading 87.04—Chassis Fitted With Engines, For The Motor Vehicles Falling Within Heading No. 87.01, 87.02 Or 87.03.
>
> Heading 87.05—Bodies (Including Cabs), For The Motor Vehicles Falling Within Heading No. 87.01, 87.02 Or 87.03.
>
> Heading 87.06—Parts And Accessories Of The Motor Vehicles Falling Within Heading No. 87.01, 87.02 Or 87.03.

The main superior heading for item 692.20, which plaintiff claims is the proper classification, again is remarkably comparable, representing a distillation of these three Brussels headings:

> Chassis, bodies (including cabs), and parts of the foregoing motor vehicles:

Thus, as was the case with the classification for motor vehicles, the Brussels and TSUS provisions which encompass plaintiff's claimed classification mirror each other. Under the dictum of *Abbey Rents*, 66 CCPA at 4 n.5, 585 F.2d at 504 n.5, and the statement of reliance in Congress' Submitting Report, the legislative intent behind these TSUS provisions can properly be gleaned from Brussels, given their close similarity. Congress most certainly relied on Brussels when drafting these TSUS provisions. Their similarity is, in fact, so striking that it is unquestionably more than just a coincidence that they track so closely. Against this backdrop, the Explanatory Notes to the Brussels Nomenclature (1955) irrefutably demonstrate that cab chassis are not chassis, but rather are motor vehicles.

The Explanatory Notes to Heading 87.04, the Brussels heading directly corresponding to the main superior heading for plaintiff's claimed provision, TSUS item 692.20 (the chassis provision), specifically exclude cab chassis from the chassis classification, placing them within the heading for motor vehicles. Thus, those Notes exclude from heading 87.04

> [c]hassis fitted with engines *and cabs*, whether or not the cab is complete (*e.g.*, without seat) (*heading 87.02*) (see Chapter Note 2). [Emphasis added.]

Further, the Explanatory Notes to Heading 87.02—the provision encompassing trucks—provides:

> Motor vehicle chassis, fitted with an engine *and cab,* are also classified here. [Emphasis added.]

The Brussels explanation of the term "chassis" is persuasive of what Congress intended when it used that same term in the TSUS *See Quigley & Manard, Inc.* v. *United States,* 75 Cust. Ct. 49, 57 C.D. 4607 (1975). When Congress enacted the main superior heading for item 692.20, the conclusion becomes inescapable that it did not intend to include chassis fitted with an engine and cab within the main superior heading for chassis. *See Schwarz* v. *United States,* 57 CCPA at 22-23, 417 F.2d at 1393-94 (Explanatory Notes to Brussels indicate that subject imports not included under claimed TSUS provision).

One further indicia of congressional intent is that portion of item 692.20 which provides "bodies (including cabs)". Had Congress intended to have cabs considered as part of a chassis, it would have drafted item 692.20 to provide "chassis (including cabs)," or words to that effect. The fact that a cab is provided for eo nomine in item 692.20 indicates that it was neither intended to fall within the residual parts provision nor is it just part of a chassis. Rather, it is a significant component which Congress chose to categorize as part of a truck body or as a type of truck body.

All in all, where Congress in plain language has expressed its intention, and the legislative history does not demonstrate a contrary purpose, this court is bound to follow the statutory provision as written. *Schramm* v. *Department of Health & Human Services,* 682 F.2d 85, 91 (3d Cir. 1982). The Supreme Court has in fact warned that "[g]oing behind the plain language of a statute in search of a possibly contrary congressional intent 'is a step to be taken cautiously' even under the best circumstances." *American Tobacco Co.* v. *Patterson,* 456 U.S. 63, 75 (1982) (quoting *Piper* v. *Chris-Craft Industries,* 430 U.S. 1, 26 (1977)). Indeed, "[a]bsent a clearly expressed legislative intention to the contrary, [the] language [of the statute] must ordinarily be regarded as conclusive." *Consumer Product Safety Commission* v. *GTE Sylvania, Inc.,* 447 U.S. 102, 108 (1980). *See Shields* v. *United States,* 698 F.2d 987, 989 (9th Cir. 1983).

In short, an examination of the plain language of item 692.20, together with the legislative history of the TSUS provisions in issue here, reveals that Congress did *not* intend to classify cab chassis within the main superior heading for "chassis, bodies (including cabs), and parts of the foregoing motor vehicles." To the contrary, in light of the Brussels Explanatory Notes, Congress fully intended cab chassis to be classified as a type of motor vehicle.

In the face of this compelling lexicographic and legislative background, Toyota nevertheless insists that a cab chassis is still classifiable as a chassis absent some showing that the cab performs some function independent of and equal to the function of the chassis.

Toyota submits that it does not, that the cab's function is incidental, subordinate and secondary to the chassis function. In other words, according to plaintiff, a cab chassis is not more than a chassis.

This argument does not withstand close scrutiny. For "[i]n order to determine if an article is more than that provided for in a particular tariff provision, it is necessary to ascertain the common meaning of the tariff provision and compare it with the merchandise in issue." *E. Green & Son* v. *United States*, 59 CCPA 31, 34, C.A.D. 1032, 450 F.2d 1396, 1398 (1971). Here, the common meaning of chassis has been shown to definitely exclude the cab. What is more, the difference between a cab chassis and a chassis is quite significant. In *Robert Bosch Corp.* v. *United States*, 63 Cust. Ct. 96, 103–04, C.D. 3881 (1969), this court elaborated on that factor:

> The principle is well settled that where an article is in character or function something other than as described by a specific statutory provision—either more limited or more diversified—and the difference is significant, it cannot find classification within such provision. It is said to be more than the article described in the statute.

The record establishes that the addition of the cab to the chassis is indeed significant, rendering a cab chassis more than a chassis. The cab contains the operating and safety features—the sine qua non of an operable vehicle. The cab provides an environment for driver and passengers not present with a chassis alone. It is, in fact, the locus for the attachment of a permanent seat enabling the chassis to become driveable on the road. It is, therefore, apparent that the cab is an element which makes a cab chassis more than a chassis, converting it to a motor vehicle. As to which type of motor vehicle, the court next turns its attention.

The Daisy-Heddon Factors

Having established that a lightweight cab chassis is not a chassis, the inquiry then is whether, as the government contends, it is properly classifiable as a truck, unfinished, under item 692.02 and General Interpretative Rule 10(h). Despite the fact that the parties have stipulated that 97 percent of imported cab chassis are completed into trucks, Toyota nevertheless vigorously maintains that a lightweight cab chassis cannot be classified as a truck because it lacks what Toyota considers to be an essential part—a cargo box or other rear adjunct. The court would readily agree that a cab chassis is not strictly speaking a truck. However, that still does not answer the question whether a cab chassis is an *unfinished* truck for tariff purposes under rule 10(h).

Toyota's contention, as the court understands it, is that an incomplete truck missing the cargo box—an "essential" part in Toyota's view—cannot be classified as the article proper because it does not possess the latter's basic characteristics or essence. While

that argument might have had some efficacy under former case law, *see Authentic Furniture Products, Inc.* v. *United States,* 61 CCPA 5, C.A.D. 1109, 486 F.2d 1062 (1973), the court must decline to grasp the handle tendered, for it is totally unavailing under the currently prevailing rule of decision. *See Daisy-Heddon, Div. Victor Comptometer Corp.* v. *United States* 66 CCPA 97, C.A.D. 1228, 600 F.2d 799 (1979).

In effect, Toyota's argument represents a thinly veiled attempt to resurrect the "essentiality" test of the *Authentic Furniture* decision. Under that test, the absence of a "substantial or essential part" would preclude classification as the unfinished article and would require classification under the associated parts provision. *Id.,* 61 CCPA at 7, 486 F.2d at 1064. That decision and its test were expressly overruled in *Daisy-Heddon,* 66 CCPA at 102, 600 F.2d at 802, replacing the "essentiality" test with a "substantially complete" yardstick.

In a revealing passage, the CCPA explained why the *Authentic Furniture* rationale could not hold:

> If, as appellant argues, the omission of a part essential to the use of the eo nomine designated article would prevent classification as the article in an unfinished condition, there would be, in practical effect, no such thing as an unfinished article, since the omission of virtually any part from an otherwise complete article would prevent its use in the manner intended. See *Authentic Furniture Products,* 61 CCPA at 8, 486 F.2d at 1064–65 (Miller, J., dissenting). Such is clearly not the intent of Congress, as evidenced by the very existence of General Interpretative Rule 10(h).

Id., 66 CCPA at 102, 600 F.2d at 802. In other words, taken to its logical extreme, the *Authentic Furniture* holding would effectively write rule 10(h) out of the TSUS. *See Colautti* v. *Franklin,* 439 U.S. 379, 392 (1979) ("the elementary canon of construction [is] that a statute should be interpreted so as not to render one part inoperative").

In opting for a "substantially complete" standard, the CCPA set forth the following five factors to guide this court in making the determination whether *vel non* certain merchandise is substantially complete:

> (1) Comparison of the number of omitted parts with the number of included parts; (2) comparison of the time and effort required to complete the article with the time and effort required to place it in its imported condition; (3) comparison of the cost of the included parts with that of the omitted parts; (4) the significance of the omitted parts to the overall functioning of the completed article; and, (5) trade customs, i.e., does the trade recognize the importation as an unfinished article or as merely a part of that article.

Daisy-Heddon, 66 CCPA at 102, 600 F.2d at 803. The CCPA was quick to add that this list is not exhaustive—on a case-by-case basis

fewer or additional factors could be determinative. *Id.* On the facts of this case, the court is of the view that the five factors delineated above are controlling. Applying these five criteria then to the facts of the present case, the court is convinced that a cab chassis is an unfinished truck.

A. *Total Parts, Labor and Cost.*

The parties have stipulated that the cab chassis portion of a truck vis-a-vis a complete truck represents 90 percent of a completed truck in terms of parts, labor and cost.

B. *Significance of the Omitted Parts vis-a-vis the Completed Article.*

This criterion is the only *Daisy-Heddon* factor which is contested. As previously indicated, Toyota contends that absent the cargo box or other rear adjunct component a cab chassis cannot be considered a truck, finished or unfinished. Toyota believes that the cargo-carrying dimension of a truck is so intrinsic to it that it cannot acquire the quality or nature of "truckness," absent that part. In other words, the cargo box, which gives a truck its full cargo-carrying potential, is not just significant, in Toyota's view; it is the very essence of a truck

On a philosophical level Toyota's argument makes for an interesting debating point. But in the sphere of law it fails. For whether a cargo box is commercially essential for a cab chassis to be sold as a *complete* truck, or whether it is functionally essential in order for a *complete* truck to haul cargo, is irrelevant. The CCPA plainly held in *Daisy-Heddon* that the question of substantial completeness "does not merely depend on the 'essential' nature, be it functional or commercial, of the omitted [part]." *Id.*, 66 CCPA at 102, 600 F.2d at 802–03. Rather, it turns on "the significance of the omitted part[s] to the *overall functioning* of the completed article." *Id.*, 66 CCPA at 102, 600 F.2d at 803 (emphasis added).

In the present case the record reflects that in its imported condition a cab chassis has the capacity to carry passengers or cargo. A cab chassis is, in short, nothing less than a fully operable, driveable truck with or without the addition of the cargo box. There is no dispute that the cargo-carrying dimension of lightweight pickup trucks is important, distinguishing them in part from automobiles. And it is also true that the cargo box performs the bulk of that cargo-carrying task. Still, the significance of the cargo box to the overall functioning of this particular truck is not so great as to remove a cab chassis from the class or kind of merchandise denominated "trucks."

Thus, in *Swift Instruments, Inc.* v. *United States*, 4 CIT 88, 554 F. Supp. 1235 (1982), *aff'd*, 714 F.2d 161 (Fed. Cir. 1983), this court concluded that the omission of lenses undeniably essential to the functioning of a complete microscope did not preclude a determination that the imported components were a substantially complete microscope. *Id.*, 4 CIT at 93, 554 F. Supp. at 1239. *A fortiori*, regard-

less of whether a cargo box is or is not essential to a truck, on the basis of the *Swift Instruments* decision, omission of that particular part cannot foreclose a cab chassis from being classified as an unfinished truck.

C. *Trade Custom.*

Regarding the fifth *Daisy-Heddon* factor, the parties have stipulated that the truck industry recognizes the importation known as cab chassis to be an incomplete vehicle. In fact, the overwhelming weight of the evidence at trial was to the same effect, several witnesses describing a cab chassis as an incomplete truck.

In sum, when juxtaposed to the five *Daisy-Heddon* criteria, a cab chassis in its imported condition is a substantially complete truck. *Compare Yamaha International Corp.* v. *United States*, 7 CIT —, Slip Op. 84–20 (March 9, 1984) (electronic musical organ lacking a cabinet properly classified as unfinished musical instrument). Consideration of those factors leads the court to conclude that omission of a cargo box or other rear adjunct from a cab chassis does not remove it from the truck classification.[3]

The court next considers what bearing, if any, Customs' practice prior to 1980 of classifying cab chassis as chassis has on this action.

Administrative Practice

While the foregoing discussion of common meaning, legislative intent and the *Daisy-Heddon* factors impels the conclusion that the imported merchandise is properly classifiable as an unfinished truck, that conclusion runs counter to a prior Customs' practice of classifying cab chassis as chassis from 1963 to 1980. As indicated, this practice was changed in 1980, *see* T.D. 80–137, giving rise to this present litigation. Although plaintiff places great reliance on that pre-1980 practice in support of its claim, the court finds that practice of little comfort. For, regardless of the rubrics employed—"compelling reasons" for changing the practice or changing a practice which is "clearly wrong"—that administrative practice was changed because totally without support in the law.

The Customs Service, by its own admission, had classified cab chassis as chassis beginning as far back as 1963. It was the subject of two notices in the Federal Register in 1975. 40 Fed. Reg. 40,190; 40 Fed. Reg. 47,806. This practice received strong affirmation in 1979 by Secretary of the Treasury W. Michael Blumenthal. In a letter dated January 26, 1979, addressed to Representative Charles

[3] Toyota further contends that these cab chassis, if not classifiable as chassis, are then properly classifiable as "other" motor vehicles under item 692.10. As the court views it, this represents little more than a slight permutation on plaintiff's argument that a cab chassis cannot be a truck absent a cargo-carrying adjunct. In light of the foregoing discussion, the stipulation that 97 percent of imported cab chassis are ultimately destined to be made into pickup trucks, and the voluminous documentary evidence and trial testimony showing that cab chassis are most often listed within a manufacturer's "truck" product line, a cab chassis is an unfinished truck. In addition, since the provision for "trucks" is more difficult to satisfy than the basket provision "other" motor vehicles, under the rule of relative specificity—General Interpretative Rule 10(c)—cab chassis must be classified as trucks. *See, e.g., United States* v. *Astra Trading Corp.*, 44 CCPA 8, C.A.D. 627 (1956); *W & J Sloane, Inc.* v. *United States*, 76 Cust. Ct. 62, C.D. 4636, 408 F. Supp. 1392 (1976) (eo nomine designation prevails over words of general description).

A. Vanik, Secretary Blumenthal gave the following reasons in support of Customs' classification of cab chassis as chassis:

> Five primary factors support the classification of cab chassis imports as "chassis" rather than as unfinished automobile trucks: (1) the fundamental Customs' principle that the tariff classification of an article must be determined by its condition at the time of importation; (2) the fact that an essential part of a truck—the cargo bed—is missing from cab chassis; (3) evidence that legislative history favors the classification of cab chassis as parts; (4) the "chief use" of cab chassis as parts of vehicles and not as vehicles themselves; and (5) administrative practice of long standing.

At the time of this letter the *Authentic Furniture* "essentiality" test, upon which Secretary Blumenthal obviously relied, was still law. However, that decision was expressly rejected some six months after the Blumenthal letter in *Daisy-Heddon.* There, as previously noted, the CCPA held that the determination whether parts of an article constitute their finished counterpart "does not depend merely on the presence or absence of an 'essential' part." *Id.*

With the cornerstone of its practice removed, it became all too clear to Customs that it had to change it to reflect the *Daisy-Heddon* decision.[4] On May 23, 1980, Treasury Decision 80–137 was published, providing in part:

> After careful consideration of all comments received Customs has concluded that the present practice of classifying cab chassis as chassis under item 692.20, TSUS, is clearly wrong with respect to lightweight cab chassis. These imports will be reclassified as unfinished automobile trucks, pursuant to general interpretative rule 10(h) of the TSUS and the Court of Customs and Patent Appeals decision in *Daisy-Heddon,* supra.

In the court's view the *Daisy-Heddon* decision, coupled with the common meaning of the term "chassis" and the legislative history of the TSUS, provide compelling reasons for rejecting Customs' past practice.

In interpreting a statute a long-standing administrative practice is entitled to deference by the courts, even where, as here, judicial review is *de novo. See, e.g., Zenith Radio Corp.* v. *United States,* 437 U.S. 443 (1978). At the same time, however, there is no rule of administrative *stare decisis. Bankamerica Corp.* v. *United States,* 103 S. Ct. 2266, 2281 (1983) (White, J., dissenting). Agency practice, once established, is not frozen in perpetuity. Agencies frequently adopt one interpretation of a statute and then, years later, adopt a differ-

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[4] In further recognition that an agency cannot change its established and uniform practices at whim, *see, e.g., Atchison, T.&S.F.R. Co.* v. *Wichita Board of Trade,* 412 U.S. 800, 808 (1973), Customs had adopted the following regulation to guide its actions in this respect:

> *Rulings regarding a rate of duty or charge* * * *. No ruling published under the provisions of this section will have the effect of changing either an earlier published ruling or a practice established by other means by imposing a higher rate of duty or charge on an article unless the earlier ruling or practice has been determined to be clearly wrong.

19 C.F.R. § 177.10(b). *See also* 19 U.S.C. § 1315(d) (Supp. IV 1980). There is no dispute here that Customs properly changed its practice insofar as the procedural aspects of that change are concerned.

ent view. As long as the new interpretation is consistent with congressional intent, an agency may make a "course correction." *Compare NLRB* v. *J. Weingarten, Inc.*, 420 U.S. 251, 264–66 (1975); *United States* v. *City of San Francisco*, 310 U.S. 16, 31–32 (1940); and *United States* v. *Jules Raunheim, Inc.*, 17 CCPA 425, 431, T.D. 43,867 (1930) ("an administrative practice in plain violation of the terms of the statute cannot be urged as determining the construction that should be given to it"), *with Hardee* v. *United States*, 708 F.2d 661, 668 (Fed. Cir. 1983) (60-year practice by IRS, expressly endorsed by tax court, could not be administratively altered since "[t]he view that the receipt of interest-free loans is not a taxable event * * * has hardened into a rule of law [and] is not grossly erroneous."). The court believes that Customs' present interpretation of items 692.02 and 692.20 is entirely consonant with what Congress intended.

Undaunted, Toyota persists by adding that Congress acquiesced in Customs' practice of classifying cab chassis as chassis, resulting in legislative ratification of that former practice. The court is not persuaded. First of all, the legislative history of the TSUS shows that Congress did not intend cab chassis to be classified as chassis. Secondly, an examination of the legislative history of the Tariff Schedules Technical Amendments Act of 1965, Pub. L. No. 89–241, 79 Stat. 933, and the Automotive Products Trade Act, Pub. L. No. 89–283, 79 Stat. 1016 (1965)—the only two relevant post-TSUS enactments—discloses no reference to the then nascent administrative practice of classifying cab chassis as chassis. There is simply no hint that Congress knew of this practice in 1965, undermining Toyota's ratification argument as of that date. *See* 1 K. Davis, Administrative Law Treatise § 5.07 at 334 (1958) ("Whenever a congressional awareness of the administrative interpretation does not appear and seems unlikely, the basis for the reenactment rule vanishes."); Griswold, *A Summary of the Regulations Problem*, 54 Harv. L. Rev. 398, 400 (1941) ("the mere reenactment of a statute following administrative construction should be given no weight whatever in determining the proper construction of the statute [emphasis deleted]").

In the face of a silent congressional record, an administrative practice must at a minimum be long-standing before the conclusion can be fairly drawn that Congress has acquiesced in it. *See, e.g., James & Moore* v. *Regan*, 453 U.S. 654, 686 (1981) (" 'long-continued practice, known to and acquiesced in by Congress, would raise a presumption that the [action] had been [taken] in pursuance of its consent. * * * ' " (quoting *United States* v. *Midwest Oil Co.*, 236 U.S. 459, 474 (1915)); *Zenith Radio Corp.*, 437 U.S. at 457; *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 380–82 (1969); *Helvering* v. *Winmill*, 305 U.S. 79, 82–83 (1938); *United States* v. *Shreveport Grain & Elevator Co.*, 287 U.S. 77, 84 (1932). The court does not consider an administrative practice of three-years' duration as of

1965, which up until then had not been the subject of any published rulings, to be either long-standing or established. *Compare CBS, Inc.* v. *FCC,* 453 U.S. 367, 382 (1981) (eight-year practice); *EEOC* v. *Associated Dry Goods Corp.,* 449 U.S. 590, 600 n.17 (1981) (fifteen-year practice); *Red Lion Broadcasting,* 395 U.S. at 382 (thirty-year practice).

During the hiatus from 1965 to 1978 there is no indication that Congress either knew of or gave this practice any consideration. However, it is uncontroverted that in 1978 Congress specifically focused on this practice. In that year the House Ways and Means Committee, through Representative Vanik, directed the General Accounting Office to examine this issue and to report back to Congress. *See* Report by the Comptroller General of the United States, GGD 79–19 (Dec. 13, 1978). The GAO was of the opinion that the practice was questionable. Congressman Vanik then asked the International Trade Commission for its evaluation of the GAO report. The ITC report concluded that the cab chassis classification was clearly wrong. *See* Assessment of the Report of the Comptroller (May 18, 1979). In the interim, as noted, Secretary Blumenthal wrote to Congressman Vanik defending Customs' position on the strength of *Authentic Furniture.*

Within five months of the ITC report and ten months of the GAO report Customs published a notice in the Federal Register advising that, in view of *Daisy-Heddon,* it was reconsidering its practice of classifying cab chassis as chassis. 44 Fed. Reg. 59,984 (1979). On May 23, 1980, T.D. 80–137 was published, effective August 21, 1980.

From the moment Customs expressed its intention of reconsidering its cab chassis classification, Congress viewed the administrative proceedings silently from the wings. To date, over three and one-half years after its publication, Congress has remained silent as to the propriety of T.D. 80–137, although fully aware of its existence. Thus, if there is an argument to be successfully made that Congress has acquiesced in an administrative practice, that argument rests with the government.

Finally, Toyota quarrels with Customs' continued practice of classifying "mediumweight" and "heavyweight" cab chassis as chassis, contending that Customs wants it both ways. While sympathetic to Toyota's view, the court is nevertheless hardpressed to see how this practice has any bearing on the outcome of the present controversy since that is not the practice confronting the court. This is not to say, of course, that Customs' treatment of medium and heavyweight cab chassis as chassis is correct. Nevertheless, disparate treatment of seemingly similar merchandise does not vitiate the conclusion that compelling reasons exist for finding Customs' past practice clearly wrong. *See Castaneda-Gonzalez* v. *INS,* 564 F.2d 417, 428 n.25 (D.C. Cir. 1977) ("The fact that an erroneous administrative interpretation of the law in one context is not correctable by the courts because it is unreviewable is no reason for the

courts to adopt it as the governing standard for administrative action which is reviewable."). *See also International Spring Mfg. Co.* v. *United States,* 85 Cust. Ct. 5, 10, C.D. 4862, 496 F. Supp. 279, 283 (1980), *aff'd,* 68 CCPA 13, C.A.D. 1257, 641 F.2d 875 (1981).

Based on the common meaning of "chassis," the foregoing legislative history, *Daisy-Heddon* and the entire record, the government's present course is the correct one. Its failure to adhere to that course in the past cannot be urged as an excuse for now ignoring the true congressional intent, *Jules Raunheim, Inc.,* 17 CCPA at 431, for no court is bound by an administrative interpretation which does not comport with that intent. *M.M. & P. Maritime Advancement, Training, Education & Safety Program* v. *Department of Commerce,* No. 83-1130, Slip Op. at 11 (Fed. Cir. March 5, 1984); *United States* v. *Sumitomo Shoji,* 63 CCPA 79, 83, C.A.D. 1169, 534 F.2d 320, 324 (1976).

CONCLUSION

For all the foregoing reasons, the court concludes that the government's classification of Toyota's cab chassis is correct. Judgment shall enter, accordingly, for defendant.

HERBERT N. MALETZ,
Senior Judge.

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The following abstracts of decisions of the United Sta
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DEPARTMENT OF THE TREASURY, *April 12, 1984.*

d States Court of International Trade at New York are
rs of the Customs and others concerned. Although the
t in full, the summary herein given will be of assistance
g important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED
				Item No. and Ra
P84/75	Ford, J. March 29, 1984	Canadian General Electric Co	83-7-01022	Item 685.90 7.7%
P84/76	Ford, J. March 29, 1984	Fair Trading Co	80-9-01493	Item 380.02 42.5%
P84/77	Ford, J. March 29, 1984	Magnavox Consumer Electronic Co	81-7-00945-S	Merchandise classified as combination articles with constructively separated cloc movements being classifie under items 720.14 or 720.1 and assessed with duty at t rate appropria to date of entr
P84/78	Watson, J. March 29, 1984	Standard Sales Inc.	82-7-00977	Item 389.62 25¢ per lb. + 15%
P84/79	Watson, J. March 30, 1984	Louis Barasch Inc.	82-2-00180	Item 382.04 42.5%
P84/80	Rao, J. April 2, 1984	Lifo Industries Ltd.	82-12-01632	Item 382.00 35%
P84/81	Ford, J. April 2, 1984	Louis Barasch Inc.	82-11-01502	Item 382.00 35%

SSED and Rate	HELD Item No. and Rate	Basis	PORT OF ENTRY AND MERCHANDISE
90	Item 688.15 6.3%	Agreed statement of facts	Buffalo Not stated
02	Item 380.66 21% + 37.5¢ per lb.	Agreed statement of facts	New York Men's shirts
lise ed as ation with ctively ed clock ents assified tems or 720.18 essed ty at the propriate of entry	Item 685.24 9.9% Dutiable as entireties on the basis of transaction value; said value is equal to sum of appraised values of radio receivers, and the timepiece portions thereof	Texas Instruments Inc. v. U.S. 1 CIT 236, aff'd 3/25/82	Los Angeles AM/FM radios with clock; entireties
32 lb. %	Item A735.20 Free of duty pursuant to GSP	Standard Surplus Sales, Inc. v. U.S., 1 CIT 119 and U.S. v. Standard Surplus Sales, Inc. 12/17/81 (CCPA)	Los Angeles Shoulder straps, shoulder pads and back bands
04	Item 382.81 25¢ per lb. + 27.5%	Brittania Sportswear v. U.S. S.O. 83-46	Los Angeles Wearing apparel
00	Item 382.12 8%	Pistol Fashions Ltd. v. U.S. S.O. 83-64	New York Trench coats
00	Item 382.33 16.5%	Brittania Sportswear v. U.S. S.O. 83-46	New York Wearing apparel

P84/82	Ford, J. April 3, 1984	Daw Industries	80-4-00669 etc.	Not stated
P84/83	Ford, J. April 3, 1984	Sunshine Leisure	81-9-01257	Item 389.62 25¢ per lb. + 15%
P84/84	Boe, J. April 5, 1984	Casio, Inc.	81-1-00044, etc.	Item 716.10-716.29 Various rates (module) Item 720.20, 720.24, 720.28 Various rates (case) Item 740.35 Various rates (watch band) Item 676.20 Various rates (electronic table top or hand-held calculators, merchandise marked "C")
P84/85	Boe, J. April 5, 1984	Sanyo Electric Inc.	81-11-01554	Merchandise separately classified under items 716.16, 716.18, 720.16, etc. and 740.35 32.4% or 29.8% 774.55 8.1%
P84/86	Rao, J. April 9, 1984	Syndication Services, Inc.	80-9-01454, etc.	Item 737.95 17.5% Item 774.60 8.5%

	Item 709.57 Various rates	Daw Industries, Inc. v. U.S., 714 F. 2d 1140 (Fed. Cir. 1983)	Minneapolis/St. Paul Prosthetic socks, and prosthetic sheaths and prosthetic socks imported together in combination packs
	Item A386.09 Free of duty pursuant to GSP	Agreed statement of facts	Los Angeles Tents: product of an eligible beneficiary country
	Item 688.36 5.5%, 5.3%, or 5.1% (merchandise marked "B") Item 676.20 5%, 4.8%, or 4.7% (merchandise marked "C")	U.S. v. Texas Instruments, Inc. (Fed. Cir. 3/25/82	New York Electronic watch modules, etc.; entirety
	Item 688.36 5.3% or 5.1%	Texas Instruments Inc. v. U.S. 1 CIT 236 (1981)	New York Solid state watches, etc. entirety
	Item A774.60 Free of duty	Nadel & Sons Toy Corp. v. U.S. 4 CIT (1982)	Chicago Plastic Kool-Aid banks

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESS
				Item No. a
P84/87	Rao, J. April 9, 1984	Syndication Services, Inc.	81–3–00327, etc.	Item 737.95 17.5% or
P84/88	Boe, J. April 9, 1984	Bulova Watch Co.	82–2–00236	Item 716.18 59¢ each Item 720.24 17¢ each 12.8% Item 720.28 .047¢ eac and 9.6% Item 716.18 .048¢ eac and 9.8% Item 740.35 29.8% Item 740.10 10.6%
P84/89	Boe, J. April 9, 1984	Royal Cathay Trading Co.	82–3–00401	Item 386.09 25¢ per l + 15%
P84/90	Newman, J. April 9, 1984	Optical Imports, Inc.	82–9–01279	Item 708.23 12.5%

ASSESSED	HELD	Basis	PORT OF ENTRY AND MERCHANDISE
n No. and Rate	Item No. and Rate		
737.95 .5% or 16.2%	Item A774.60 Free of duty	Nadel & Sons Toy Corp., v. U.S. 4 CIT (1982)	Chicago Plastic Kool-Aid banks
716.18 ¢ each 720.24 ¢ each and .8% 720.28 7¢ each d 9.6% 716.18 8¢ each d 9.8% 740.35 .8% 740.10 .6%	Item 688.36 5.3% or 5.1%	Texas Instruments Inc. v. U.S. 1 CIT 236 (1981)	New York Solid state electronic watches or solid state electronic Modules (merchandise marked "A"); watch bracelets (merchandise marked "C") entirety with solid state electronic watches
386.09 ¢ per lb. + 15%	Item 706.20 17.8%	U.S. v. J.E. Mamiye & Sons	San Francisco Handbags
708.23 .5%	Item 685.10 6%	Rank Precision Industries, Inc. 69 CCPA (1981)	New York Motorized television lens systems

P84/91	Watson, J. April 10, 1984	Komatsu America Corp.	75-12-03249	Item 692.35 5.5% (merchandise marked "B") Item 664.05 5% (merchandise marked "C") Item 692.35 5.5% (merchandise marked "D") Item 664.05, etc. Various rates (merchandise marked "E"
P84/92	Watson, J. April 10, 1984	Novus Electronics Corp.	83-3-00433	Item 688.36 Various rates (modules and cases) Item 740.35 Various rate (bands)
P84/93	Watson, J. April 11, 1984	Kenwood Electronics	81-12-01664	Items 678.50 and 720.18 4.8% and 14.8% plus $1.04 each

.35 merchan- marked .05 erchan- marked .35 nerchan- marked .05, etc. s rates chandise ked "E")	Item 664.05 5% (merchandise marked "B") Export value—represented by C and I invoice unit values, plus 11% (merchandise marked "C") Item 664.05 5% (merchandise "D") Export value—represented by invoice fob unit prices plus 32% for parts exported prior to 10/77, and invoice fob unit price plus 28.2% for merchandise exported from 10/77-7/31/79	Agreed statement of facts	San Francisco; Portland, Oreg. Bulldozers, crawler loaders (merchandise marked "B") Bulldozers attachments, etc. (merchandise marked "C") Parts for bulldozers, etc. (merchandise marked "D") Parts for bulldozers etc. (merchandise marked "E")
36 s rates ules cases) 40.35 ous rates ds)	Item 688.36 5.5%, 5.3%, 5.1% or 4.9% as an entirety with modules and cases	Agreed statement of facts	New York Electronic LCD watches, solid state digital modules, cases and bands for solid state digital timepiece with buttons for activating the desired display
8.50 and and % plus each	Item 678.50 4.8%	Agreed statement of facts	Los Angeles AM/FM solid-state digital time-keeping radio/cassette combinations with LED displays.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSE
				Item No.
P84/94	Watson, J. April 11, 1984	Komatsu America Corp.	74-5-02038	Item 692. 5.5% (mercha marked Item 664. 5% (mercha marked Item 692. 5.5% (mercha marked Item 664. Various (merc mark

ASSESSED	HELD	Basis	PORT OF ENTRY AND MERCHANDISE
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m 692.35 5.5% merchandise narked "B") m 664.05 5% merchandise narked "C") m 692.35 5.5% merchandise narked "D") m 664.05, etc. Various rates (merchandise marked "E")	Item 664.05 5% (merchandise marked "B") Export value— represented by C and I invoice unit values, plus 11% (merchandise marked "C") Item 664.05 5% (merchandise marked "D") Export value— represented by invoice fob unit prices plus 32% for parts exported prior to 10/77, and fob unit price plus 28.2% for merchandise exported from 10/77 through 7/31/79	Agreed statement of facts	San Francisco; Chicago; Philadelphia; Houston Bulldozers, crawlers, etc.

P84/95	Watson, J. April 11, 1984	Komatsu America Corp.	76-1-000174	Item 692.35 5.5% (merchandi marked "B" Item 664.05 5% (merchandi marked "C" Item 692.35 5.5% (merchandi marked "D" Item 664.05, e Various rat (merchan marked "

92.35 chandise ked "B") 64.05 chandise ked "C") 92.35 chandise ked "D") 64.05, etc. ous rates erchandise arked "E")	Item 664.05 5% (merchandise marked "B") Export value—represented by C and I invoice unit values, plus 11% (merchandise marked "C") Item 664.05 5% (merchandise marked "D") Export value—represented by invoice fob unit prices plus 32% for parts exported prior to 10/77, and fob unit price plus 28.2% for merchandise exported from 10/77 through 7/31/79 (merchandise marked "E")	Agreed statement of facts	San Francisco; Los Angeles; Savannah; Longview; New York Bulldozers, crawlers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED
				Item No. and R
P84/96	Watson, J. April 11, 1984	Komatsu America Corp.	77-4-00635	Item 692.35 5.5% (merchandise marked "B") Item 664.05 5% (merchandise marked "C") Item 692.35 5.5% (merchandise marked "D") Item 664.05, et Various rate (merchand marked "E

ESSED	HELD	Basis	PORT OF ENTRY AND MERCHANDISE
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2.35 handise ed "B") 4.05 handise ed "C") 2.35 handise ed "D") 4.05, etc. us rates rchandise rked "E")	Item 664.05 5% (merchandise marked "B") Export value—represented by C and I invoice unit values, plus 11% (merchandise marked "C") Item 664.05 5% (merchandise marked "D") Export value—represented by invoice fob unit prices plus 32% for parts exported prior to 10/77, and fob unit price plus 28.2% for merchandise exported from 10/77 through 7/31/79 (merchandise marked "E")	Agreed statement of facts	San Francisco; Los Angeles; Philadelphia; Portland, Oreg. Bulldozers, crawlers, etc.

P84/97	Watson, J., April 11, 1984	Komatsu America Corp.	79-2-00273	Item 692.35 5.5% (merchandi marked "B Item 664.05 5% (merchandi marked "C Item 692.35 5.5% (merchandi marked "D Item 664.05, Various rat (merchan marked "

392.35 % rchandise ked "B") 664.05 rchandise ked "C") 392.35 % rchandise ked "D") 664.05, etc. ious rates nerchandise arked "E")	Item 664.05 5% (merchandise marked "B") Export value—represented by C and I invoice unit values, plus 11% (merchandise marked "C") Item 664.05 5% (merchandise marked "D") Export value—represented by invoice fob unit prices plus 32% for parts exported prior to 10/77, and fob unit price plus 28.2% for merchandise exported from 10/77 through 7/31/79 (merchandise marked "E")	Agreed statement of facts	Philadelphia Bulldozers, crawlers, etc.

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATIO
R84/105	Re. C.J. March 29, 1984	Associated Merchandising Corp.	75-4-00903	Export value
R84/106	Re. C.J. March 29, 1984	Chori New York Inc.	75-11-02797	Export value
R84/107	Re. C.J. March 29, 1984	Mitsui & Co.	75-9-02311	Export value
R84/108	Re. C.J. March 29, 1984	New York Merchandise Co.	74-9-02381	Export value

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SIS OF UATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
alue	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York: Los Angeles Not stated
alue	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York Not stated
alue	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	Newark Not stated
alue	Invoiced unit prices less non-dutiable charges included therein	C.B.S. Imports v. U.S. (C.D. 4739)	Portland, Oreg.; Los Angeles; San Diego Not stated

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATIO
R84/109	Watson. J. March 30, 1984	F.W. Woolworth Co.	R61/9374. etc.	Export value
R84/110	Ford. J. April 2, 1984	William Joffroy Inc.	76-1-00225	Export value
R84/111	Re. C.J. April 3, 1984	Associated Merchandising Corp.	73-6-01472	Export value
R84/112	Re. C.J. April 3, 1984	Mitsui & Co.	74-8-02176	Export value
R84/113	Re. C.J. April 3, 1984	Brochers Trading Corp.	73-9-02564 etc.	Export value
R84/114	Re. C.J. April 4, 1984	M. Adler's Son, Inc.	73-11-03254	Export value
R84/115	Re. C.J. April 4, 1984	Nichimen Co.	74-6-01451	Export value
R84/116	Re. C.J. April 4, 1984	Yoshida International	73-5-01224, etc.	Export value

ASIS OF LUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Baltimore Rugs
value	Appraised values shown on decision and judgment	Agreed statement of facts	Nogales Cantaloupes
value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York Not stated
value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York; San Francisco; Charleston; Baltimore; Philadelphia; New Orleans; Norfolk; Boston; Seattle, Wash.; Los Angeles; Houston Not stated
value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York Not stated
value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York Not stated
value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	Cleveland; Los Angeles; Wilmington; New York Not stated
value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York: Seattle; Los Angeles Not stated

R84/117	Re. C.J. April 5, 1984	Chori New York Inc.	74-6-01544, etc.	Export value
R84/118	Re. C.J.	Uniroyal, Inc.	74-12-03321	Export value
R84/119	Re. C.J. April 9, 1984	Ataka America Inc.:	74-8-02137	Export value
R84/120	Re. C.J. April 9, 1984	C. Itoh & Co.	73-2-00452	Export value

value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York Not stated
value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York Not stated
value	Appraised unit values as found by appraising customs official without the addition for currency revaluation, correctly reflect export value	C.B.S. Imports v. U.S. (C.D. 4739)	New York Not stated
value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York Not stated

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF .	COURT NO.	BASIS OF VALUATIO
R84/121	Re. C.J.	C. Itoh & Co.	73-4-01063, etc.	Export value (merchandise marked "A" a "B") United States va (merchandise marked "D" a "E")
R84/122	Re. C.J. April 9, 1984	Lollytogs Ltd.	73-6-01351	Export value
R84/123	Re. C.J. April 9, 1984	Marubeni America Corp.	73-8-02136, etc.	Export value
R84/124	Re. C.J. April 9, 1984	Montgomery Ward & Co.	73-1-00331, etc.	Export value

SIS OF UATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
alue andise "A" and tates value andise "D" and	Appraised values shown on entry papers less additions included to reflect currency revaluation (merchandise marked "A") At invoice CIF or C&F price less the statutory deduction for ocean freight and insurance (merchandise marked "B") At landed duty paid price less statutory deductions for general expenses and profit in an amount of 11.72% thereof less freight, insurance and duty, provided that said deductions do not result in an appraised value below the fob invoiced values, less those additions included to reflect currency revaluation (merchandise marked "D" and "E")	C.B.S. Imports v. U.S. (C.D. 4739)	New York Not stated
lue	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York Not stated
lue	Unit values found by appraising customs official less any additions for currency flectuation	C.B.S. Imports v. U.S. (C.D. 4739)	New York: Los Angeles; San Francisco Not stated
lue	Appraised values reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York: Boston Not stated

R84/125	Re. C.J. April 9, 1984	Zayre Corp.	73-6-01554	Export value
R84/126	Watson, J. April 10, 1984	Nissho-American Corp.	R62/8505, etc.	Export value
R84/127	Re. C.J. April 11, 1984	Dorshkind & Co.	73-7-02021	Export value
R84/128	Re. C.J. April 11, 1984	Metasco, Inc.	73-3-00833	Export value
R84/129	Re. C.J. April 11, 1984	Mitsui & Co.	73-5-01236	Export value
R84/130	Re. C.J. April 11, 1984	Nichimen Co.	73-4-01004, etc.	Export value
R84/131	Watson, J. April 11, 1984	American-SMT-Pullmax, Inc.	81-9-01228	Export value

alue	Represented by appraised values, less amounts added for currency fluctuation	C.B.S. Imports v. U.S. (C.D. 4739)	New York: Boston Not stated
alue	F.O.B. unit invoice prices plus 20% of difference between fob unit invoice prices and appraised values	Agreed statement of facts	New York Jackets, etc.
alue	Appraised values specified on entry papers by liquidating officer, less any additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	San Francisco; Seattle Handbags
alue	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York: Seattle Not stated
alue	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	Atlanta; New York; San Francisco; Miami; Houston; Charleston; New Orleans; Detroit; Portland; Seattle; Philadelphia Not stated
alue	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	San Francisco Not stated
alue	Invoice unit prices less discount shown on commercial invoices accompanying entry papers plus certain charges as marked on invoices	Agreed statement of facts	Mobile Not stated

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS VALUA
R84/132	Watson, J. April 11, 1984	American SMT-Pullmax, Inc.	82-1-00051	Export valu
R84/133	Watson, J. April 11, 1984	Ataka America Inc.	73-4-00951	Export valu
R84/134	Watson. J. April 11, 1984	Carlyle Footwear	80-1-00219	American se price
R84/135	April 11, 1984	F.W. Woolworth Co.	R58/6278, etc.	Export valu

BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
rt value	Invoice unit price less discount shown on the commercial invoices accompanying the entry papers plus certain charges as marked on invoices	Agreed statement of facts	Portland, Oreg. Not stated
rt value	Appraised unit values as found by appraising customs official, without addition for currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York: New Orleans; San Juan Not stated
rican selling ce	Appraised values less 28%, per pair	Agreed statement of facts	Boston Footwear
rt value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	San Francisco Binoculars, etc.

Appeals to the U.S. Court of Appeals for the Federal Circuit

APPEAL 84-971 AMOCO OIL COMPANY v. UNITED STATES—NATURAL GAS LIQUIDS—Appeal from Slip Op. 84-6, Filed on March 26, 1984

APPEAL 84-1040 SCHOTT OPTICAL GLASS, INC., v. THE UNITED STATES OF AMERICA—OPTICAL LENS—Appeal from Slip Op. 84-9, filed April 2, 1984.

Decision of U.S. Court of Appeals for the Federal Circuit

APPEAL 84-640 U.S. STEEL CORP., REPUBLIC STEEL CORP. v. UNITED STATES, COUNTERVAILING DUTY PROCEEDINGS—TERMINATION OF COUNTERVAILING DUTY CLAIMS—PRELIMINARY DETERMINATIONS—Appeal from Slip Op. 83-76, filed November 21, 1983, decided March 15, 1984.

Index

U.S. Customs Service

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

POSTAGE AND FEES PAID
DEPARTMENT OF THE TREASURY (CUSTOMS)
(TREAS. 552)